

EXHIBIT FFF

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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McDONALD'S CORPORATION,

Case 1:19-cv-06471

Plaintiff,

-against-

VANDERBILT ATLANTIC HOLDINGS LLC,

Defendant.

- - - - - x

Zoom video conference deposition of
SHARON LOCATELL, taken pursuant to
notice, was held remotely, commencing
September 23, 2021, 10:07 a.m., before
Leslie Fagin, a Stenographic Court
Reporter and Notary Public in the State
of New York.

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A P P E A R A N C E S:

(All Parties Present Via Zoom.)

PASHMAN STEIN WALDER HAYDEN P.C.

Attorneys for Plaintiff

Court Plaza South

21 Main Street, Suite 208

Hackensack, New Jersey 07601

BY: BRENDAN M. WALSH, ESQUIRE

MEISTER SEELIG & FEIN LLP

Attorneys for Defendant

125 Park Avenue, 7th Floor

New York, New York 10017

BY: HOWARD S. KOH, ESQUIRE

ALSO PRESENT:

STACY HOWARD

MICHAEL MEYER

1 S. Locatell

2 S H A R O N L O C A T E L L, called as a
3 witness, having been duly sworn by a
4 Notary Public, was examined and testified
5 as follows:

6 EXAMINATION BY

7 MR. KOH:

8 Q. Good morning, Ms. Locatell. My
9 name is Howard Koh. I'm counsel for the
10 defendant in this case pending in the United
11 States District Court for the Eastern
12 District of New York.

13 My client, as you know, is
14 Vanderbilt Atlantic Holdings LLC. I will be
15 taking your deposition today and I believe
16 you've been deposed before, is that correct?

17 A. Yes.

18 Q. And I don't know if you have been
19 on video depositions before, but it's
20 important that we speak one at a time, is
21 that a fair instruction?

22 A. Understood.

23 Q. And do you understand that if, at
24 any time, you would like to take a break, you
25 may do that, just let us know and I would

1 S. Locatell

2 request that you answer the question pending
3 on the record, is that understood?

4 A. Understood.

5 Q. You are the president of Appraisers
6 and Planners, correct?

7 A. Yes.

8 Q. And it's Appraisers and Planners,
9 Inc.

10 What is that organization?

11 A. We are a midsize appraisal and
12 consulting firm that deals with real estate
13 in the metro New York area.

14 Q. And you are a member of the
15 Appraisal Institute, MAI?

16 A. That is correct.

17 Q. I understand you are also a member
18 of the Counselors of Real Estate of CRE?

19 A. That is also correct.

20 Q. I understand you are a member of
21 the Royal Institution of Chartered Surveyors,
22 an MRICS?

23 A. That's also correct, yes.

24 Q. You are a licensed real estate
25 appraiser in what jurisdictions?

1 S. Locatelli

2 A. New York and New Jersey and also
3 Connecticut.

4 Q. You are not an attorney, though,
5 are you?

6 A. I am not.

7 Q. You are not an architect?

8 A. I am not.

9 Q. But you have participated in rent
10 reset proceedings before, am I correct?

11 A. Many times, yes.

12 Q. Are you able to estimate how many?

13 A. Fifty to 60, that is an estimate.

14 Q. And you've participated, both as a
15 party representative and a neutral, as I
16 understand it, is that correct?

17 A. That is correct.

18 Q. And can you give us your best
19 estimate as to the -- in those 50 or 60 rent
20 reset proceedings, how many times you
21 participated as a party and how many times --
22 not a party, but a party representative and
23 how many times you participated as a neutral?

24 A. I would say roughly, I've been a
25 neutral roughly 15 to 20 times. Again, this

1 S. Locatell
2 is an estimate, so maybe one-third,
3 two-thirds, one-third neutral, two-thirds
4 party appointed.

5 Q. Also, as I understand it, you
6 qualified as an expert in Federal Court?

7 A. That is correct.

8 Q. How about in any State Court, have
9 you been qualified as an expert?

10 A. Yes, New York, Connecticut and New
11 Jersey, I believe.

12 Q. And have you testified in Federal
13 Court before?

14 A. I have testified via a taped
15 deposition. The case was settled prior to
16 going to full litigation.

17 Q. And have you given testimony in any
18 State Court proceedings?

19 A. Yes, I have.

20 Q. Was that at a trial, a hearing or a
21 deposition or something else?

22 A. Both trial and deposition. I may
23 have misspoken, misunderstood. I have
24 testified in Federal Court numerous times, I
25 apologize.

1 S. Locatell

2 Q. Have you ever not been qualified as
3 an expert?

4 A. No.

5 Q. Now, you mentioned that you
6 participated in 50 or 60 rent reset
7 proceedings.

8 Were any of those -- let me ask the
9 question less generally. Did any of those
10 involve ground rent as opposed to some other
11 kind of rent?

12 A. Yes, many of them have involved
13 ground rent and many of them have involved
14 rents for space. It runs the gamut.

15 Q. So you've participated in ground
16 rent reset proceedings, office rent reset
17 proceedings? You have to answer verbally.

18 A. Yes, yes, and retail rent reset
19 proceedings, industrial space rent reset
20 proceedings, as well.

21 Q. How long have you worked as an
22 appraiser for McDonald's?

23 MR. WALSH: Objection to form.

24 Q. Prior to this assignment, were you
25 or your firm ever retained by McDonald's?

1 S. Locatell

2 A. Yes.

3 Q. When was the first time that you
4 were retained by McDonald's?

5 A. I believe it was 2013, 2012, 2013,
6 to the best of my recollection.

7 Q. And who at McDonald's hired you,
8 for lack of a better word?

9 MR. WALSH: Objection to form.

10 Q. Who at McDonald's retained
11 Appraisers and Planners back in 2012, 2013?

12 MR. WALSH: Same objection.

13 Q. You can answer.

14 A. I honestly don't recall who
15 retained me the first time I did work for
16 McDonald's.

17 Q. I think you've brought up an
18 attorney distinction, so let me pursue that a
19 little bit further.

20 Who first asked you to work for
21 McDonald's back in 2012 or 2013?

22 A. I don't recall.

23 Q. And since that first assignment for
24 McDonald's in 2012 or 2013, how many
25 assignments have you done for McDonald's, not

1 S. Locatell

2 including the one related to or any
3 assignments related to 840 Atlantic Avenue?

4 A. Again, this is an estimate, I would
5 say over the last almost 10 years, maybe 20
6 assignments.

7 Q. Can you estimate for me, at any
8 given time, how many assignments from
9 McDonald's, Appraisers and Planners has in
10 its office?

11 MR. WALSH: Objection to form.

12 Q. You can answer.

13 A. Sometimes none, on average, we do
14 one or two a year maybe.

15 Q. So you average one or two
16 currently, you are averaging between one or
17 two assignments from McDonald's a year, is
18 that correct?

19 A. That's about correct, yes.

20 Q. How long have you known Carol
21 DeMarco?

22 A. Probably -- I don't recall if
23 Carol -- if I was introduced to Carol during
24 the first assignment or so that I had for
25 McDonald's, but, if not, it was probably

1 S. Locatell

2 shortly thereafter, so maybe, if it wasn't
3 2013, maybe 2014 or so.

4 Q. Over the period of time since 2013
5 or maybe 2012 or 2014 that you have done
6 assignments for McDonald's, approximately how
7 many of those assignments has Carol DeMarco
8 been involved in?

9 A. I would say she was involved in 80
10 percent of them.

11 Q. When did you first get introduced
12 to Mike Meyer?

13 A. Again, I don't specifically recall,
14 but I worked on an assignment for them, with
15 KTR, as well, a few years back and I think
16 Mike might have been involved with that, so
17 it's been a few years.

18 Q. What assignment was that?

19 A. That was the rent reset for space
20 in Times Square.

21 Q. Were you representing McDonald's in
22 that proceeding?

23 MR. WALSH: Objection to form.

24 A. Yes.

25 Q. Were you engaged by McDonald's for

1 S. Locatell

2 that rent reset proceeding in Times Square?

3 A. Yes, both KTR and myself were.

4 Q. Have you ever worked for the
5 principal of Vanderbilt Atlantic, Sam
6 Rottenberg?

7 A. No, not to my knowledge. I have a
8 large staff of appraisers here, but, to my
9 knowledge, we have never done any work for
10 Mr. Rottenberg.

11 Q. Have you ever done any work for the
12 firm of Wachtel Missry?

13 A. Again, not to my knowledge,
14 however, my partner has been in business for
15 -- this firm has been in business 80 years
16 and he has been working, not quite that long,
17 but almost as long, so I'm hes -- I hesitate
18 to say that we have never done work for them,
19 but, to my knowledge, they are not a
20 recurring client of ours.

21 Q. Let's talk about you, personally.
22 You, personally, have never worked with Sam
23 Rottenberg, right?

24 A. No, not to my knowledge.

25 Q. And have you, personally, ever

1 S. Locatell
2 worked with anybody at the law firm of
3 Wachtel Missry?

4 A. I don't recall. I work for a lot
5 of law firms, so I could have done a job for
6 an attorney or I could have done a job for a
7 client whose attorney was Wachtel and I was
8 retained by them, but dealt with the client,
9 so I'm hesitant to say no, never, to my
10 knowledge, not that I recall.

11 Q. When was the first time you met
12 Morris Missry?

13 A. I believe the first time I met him
14 was sometime in early 2019 at a meeting that
15 I attended with McDonald's and Mr. Missry and
16 his client.

17 Q. When you say, Mr. Missry and his
18 client, you mean Sam Rottenberg, right?

19 A. Yes, there was another gentleman
20 there, Tom Tener was there and there was
21 another gentleman. It might have been Mr.
22 Li, who also attended.

23 Q. We will talk about that meeting, I
24 suspect, a little bit later in the
25 deposition.

1 S. Locatell

2 You've also worked with my partner,
3 Steven Meister, is that correct?

4 A. That is correct.

5 Q. How many times have you and Mr.
6 Meister worked together on an assignment on
7 behalf of a client?

8 A. I believe it's twice.

9 Q. This time, you are not working on
10 behalf of Mr. Meister?

11 A. I am not.

12 Q. So earlier I was asking you a
13 little bit about the various types of rent
14 reset proceedings you had been involved in.

15 You would agree that you've been
16 involved in all types of rent reset
17 proceedings, right?

18 MR. WALSH: Objection to form.

19 A. I have been.

20 Q. Are there any specific
21 considerations that apply when you appraise
22 or you are involved in a -- specifically in a
23 ground rent reset proceeding?

24 MR. WALSH: Objection to form.

25 A. I'm not sure what you mean by

1 S. Locatell

2 specific considerations.

3 Q. How do ground rent reset
4 proceedings differ from other rent reset
5 proceedings?

6 A. All reset, all rent reset
7 proceedings differ from each other, whether
8 ground rent reset proceedings or space rent
9 reset proceedings. It always goes back to
10 the lease, what does the lease specifically
11 instruct you to do.

12 Q. So you would agree then, the source
13 for what the appraiser is supposed to do in a
14 rent reset proceeding is defined by the
15 lease, is that fair to say?

16 MR. WALSH: Objection to form and
17 to the extent it calls for a legal
18 conclusion.

19 Q. You can answer.

20 A. I agree that in any fair market
21 value reset, that the lease is a very
22 important document.

23 Q. Have you ever heard the term, pad
24 site?

25 A. Yes.

1 S. Locatell

2 Q. What does that term mean to you?

3 A. A pad site is typically a site that
4 is attached to a larger retail center, so,
5 for example, malls or strip centers will have
6 outposts of banks or fast food restaurants
7 located within their parking area. That is
8 what a pad site is.

9 Q. Have you ever heard the term,
10 development site?

11 A. Yes, of course.

12 Q. What does the term development site
13 mean to you?

14 A. A development, broadly speaking,
15 development site means a piece of land or an
16 under improved parcel that can be developed
17 for some purpose.

18 Q. When you say under improved, what
19 do you mean by under improved?

20 A. Well, for example, you could have a
21 site that has a hundred year old industrial
22 building on it, but it is a development site
23 today because it would be redeveloped with an
24 office building if it were available for sale
25 and you could deliver it vacant of leases,

1 S. Locatell

2 most importantly, and tenancies.

3 Q. Are you being represented by an
4 attorney at this deposition?

5 A. No, I am not.

6 Q. What did you do to prepare to be
7 deposed today?

8 A. Well, as you know, I've been
9 involved in this property for many years and
10 it's been quite a while since I looked at the
11 file, my reports, Mr. Tener's reports, so I
12 reread all of that data, I met with counsel
13 yesterday to -- you delivered to my office
14 two giant boxes of documents, one of which I
15 almost tore my back this morning trying to
16 put it on a chair.

17 Q. Sorry?

18 A. I did not bend from my knees, is
19 the problem, but, in any case, I paged
20 through these documents and then realized it
21 appeared to be my entire file which I had
22 sent to you earlier at some point. I don't
23 remember if it was last year or early this
24 year, so I generally relooked through all the
25 data so I could answer your questions to the

1 S. Locatell

2 best of my ability today.

3 Q. You mentioned that you met with
4 counsel yesterday. Who was that?

5 A. Mr. Walsh and Ms. Howard.

6 Q. Was that meeting in person or some
7 other manner?

8 A. It was in the 2021 Zoom fashion.

9 Q. So what did you and Mr. Walsh and
10 Ms. Howard discuss at this meeting?

11 A. Well, basically, we opened the
12 meeting, we met for a couple of hours, we
13 discussed the fact that this deposition was
14 likely going to be all day because they told
15 me how long that Mr. Tener's deposition took,
16 and then we discussed all of the documents
17 that you had delivered and I had been paging
18 through them and was wondering if I needed to
19 read all of them, we discussed that.

20 We discussed the reports that I had
21 prepared, the report that Mr. Tener had
22 prepared, just the same thing that I told you
23 earlier in terms of trying to prepare so I
24 could answer your questions to the best of my
25 ability, because it has been sometime since

1 S. Locatell

2 all of these documents were researched and
3 read, et cetera.

4 Q. During yesterday's Zoom meeting,
5 did McDonald's counsel point to any or
6 identify any specific documents that they
7 wanted you to pay particular attention to?

8 A. They advised me to be familiar with
9 my reports, which I knew to do, so those were
10 the documents that we talked about.

11 Q. Did you talk about Mr. Tener's
12 reports?

13 A. Not in any specificity, just as
14 they related to the rereading them and being
15 familiar with the information that they
16 contained.

17 MR. KOH: Nat, will you please
18 bring up No. 1 in my stack, the November
19 20, 2018 email from Ms. Locatell to
20 Ellen Benjamin. It's now been marked as
21 GG.

22 (Exhibit GG, November 20, 2018
23 email from Ms. Locatell to Ellen
24 Benjamin, marked for identification.)

25 Q. I would like to focus your

1 S. Locatell
2 attention on the second email from the top on
3 Exhibit GG, that is an email from Michael
4 Meyer dated August 16, 2018 to you with a
5 copy to Ms. DeMarco.

6 Is this the first time you recall
7 having contact with Mr. Meyer?

8 MR. WALSH: Objection to form.

9 A. Regarding this assignment, this
10 appears -- it's roughly around the time I
11 remember I was contacted.

12 Q. That is helpful and you answered my
13 next question.

14 My next question is simple. Had
15 you communicated with Mr. Meyer about
16 anything before October 16, 2018?

17 MR. WALSH: Objection to form.

18 A. Again, as I said earlier, I don't
19 recall if Mr. Meyer was involved in the Times
20 Square matter, so I don't recall. He was not
21 a primary contact person for that matter, but
22 there were a number of people from McDonald's
23 that were at the hearing and were involved
24 and I don't recall if Mr. Meyer was one of
25 them. If he was, then I might have had a

1 S. Locatell

2 conversation with him or been party to a
3 conversation during that period. However, as
4 relates to this assignment, this is roughly
5 the timeframe that I remember being contacted
6 by Mr. Meyer.

7 Q. That's helpful, too. My question
8 is prior to this assignment, were there any
9 other assignments that you worked on with Mr.
10 Meyer where you had substantial, let's call
11 it, contact with him?

12 MR. WALSH: Objection to form.

13 A. No.

14 Q. Was the answer no?

15 A. The answer is no.

16 MR. KOH: Let's bring up what was
17 previously marked Plaintiff's Exhibit
18 39. It's No. 2 in my stack.

19 Q. What should be on your screen now
20 is Plaintiff's Exhibit No. 39.

21 Can you tell us what this document
22 is, Ms. Locatell?

23 A. This appears to be an email that --
24 it's a chain of an email where we sent a
25 retainer to Mr. Meyer and then he responded

1 S. Locatell
2 to see the signed letter attached. I'm
3 assuming the signed letter was the retainer.
4 That's what it seems to be referring to.

5 Q. For this property at 840 Atlantic
6 Avenue, which is the subject of this
7 litigation, was this the only retainer that
8 was entered into?

9 A. To the best of my recollection.

10 Q. So it would be accurate to say that
11 Appraisers and Planners, Inc.'s assignment
12 here would be to act as the tenant's
13 appraiser in regard to determining the fair
14 market rental value, FMRV, payable for the
15 five-year option period for the demised
16 ground lease premises as of approximately
17 March 2018 date to be provided, right?

18 MR. WALSH: Objection to form.

19 A. This is a form retainer we do send
20 out and it also includes all work associated
21 with this assignment and that's why we have
22 an hourly rate, as many times assignments are
23 broader than what one initially thinks
24 they're going to be, so this retainer covered
25 any work we were going to do for McDonald's

1 S. Locatelli
2 regarding 840 Atlantic Avenue.

3 Q. The only kind of work mentioned in
4 the retainer is the acting as the tenant's
5 appraiser in regards to determining the fair
6 market rental value of the subject premises,
7 right?

8 MR. WALSH: Objection to form.

9 A. No, that's incorrect. I mean, the
10 retainer is for work related to this property
11 and we bill hourly for all work necessary, so
12 this would have been -- this is the retainer
13 that McDonald's -- any work that McDonald's
14 asked me to do in regard to 840 Atlantic
15 Avenue would be covered by this retainer and
16 it would be billed hourly beyond the flat
17 fee.

18 Q. Is it true that once you were
19 retained, one of the early things that you
20 would do in order to fulfill your assignment
21 or assignments to McDonald's would be to
22 review the ground lease of the subject
23 premises, right?

24 MR. WALSH: Objection to form.

25 A. I'm sorry, you said once I was

1 S. Locatell

2 retained?

3 Q. Let me ask you, did there come a
4 time when you reviewed a ground lease related
5 to the premises at 840 Atlantic Avenue?

6 A. Yes.

7 MR. KOH: Let's bring up exhibit --
8 No. 3 in my stack, the March 18, 1998
9 ground lease. It was previously marked
10 as Exhibit C.

11 Q. Is this the ground lease that you
12 reviewed?

13 A. It appears to be. Yes, this
14 appears to be the ground lease.

15 Q. Included in that ground lease as
16 Exhibit F, I believe, is a document called an
17 option rent addendum.

18 Are you familiar with that?

19 MR. WALSH: Objection to form.

20 A. Can you direct me to the page,
21 please?

22 Q. I'm going to make it simple and I
23 will bring up what was marked as Exhibit 4 --
24 is 4 in my stack, which is the option rent
25 addendum.

1 S. Locatell

2 Take a look at that. This was
3 previously marked as Exhibit D.

4 Do you know what Exhibit D is?

5 A. I do. That is the option rent
6 addendum that is part of the lease.

7 Q. And in connection with this
8 assignment, did you read the option rent
9 addendum?

10 A. Yes, I did.

11 Q. I would like to focus on the second
12 page of that and the second paragraph, which
13 begins, The rental value. Read that
14 paragraph to yourself and tell me what that
15 paragraph means to you.

16 MR. WALSH: Objection to form.

17 A. It means we are determining a
18 rental value without the improvements in
19 place.

20 Q. Under what use of the property is
21 the rental value to be determined?

22 MR. WALSH: Objection to form.

23 A. Well, it's very dangerous to just
24 select a sentence within the entirety of this
25 option agreement or option rent addendum.

1 S. Locatell

2 The entirety -- these two pages directs the
3 appraiser as to how they are to determine the
4 rental value and the most important piece of
5 information is that it's subject to the lease
6 itself and this term is for a five-year
7 renewal term, so the use is relative to the
8 term to which the property can be put.

9 Q. Taking your -- I'm sorry, did you
10 finish?

11 A. I am finished, yes.

12 Q. Taking your assumption, would it be
13 fair to say that the option rent addendum
14 directs that the property be appraised at its
15 highest and best use taking into account
16 whatever the term is?

17 MR. WALSH: Objection to form.

18 A. It directs us to determine the
19 rental value based on highest and best use
20 relative to the term, yes.

21 Q. A little bit earlier you mentioned
22 that the engagement letter, which we looked
23 at at P 39, covered not only working as the
24 tenant's appraiser under the option rent
25 addendum, but also doing other work for

1 S. Locatell

2 McDonald's relating to this property.

3 Did there ever come a time when you
4 were asked to do other work relating to this
5 property that did not have to do with the
6 setting the fair market rent under the option
7 term addendum?

8 MR. WALSH: Objection to form.

9 Q. Do you understand the question?

10 A. I believe I do.

11 Can I answer?

12 Q. Yes, please.

13 A. So I was asked to attend meetings,
14 obviously, and to review landlord's reports.
15 I was asked to do research regarding such
16 review and attending such a meeting, so we
17 were asked to prepare various analyses and
18 work relative to both the preparation of my
19 reports, as well as the reports prepared by
20 Mr. Tener at KTR.

21 Q. When you say you were asked to
22 prepare various analyses and reports, were
23 those written?

24 A. Some were, yes.

25 Q. Can you describe those written

1 S. Locatell

2 reports for me?

3 A. So the initial reports that we
4 prepared for the client in late 2018 dealt
5 with the value of the property as a
6 development site and those two -- that value
7 was prepared without consideration of the
8 language of the rent option addendum.

9 Additionally, once the rent renewal
10 period passed, which was April, April 1, 2019
11 I believe is the date that the rent, renewal
12 rent is to be redetermined, we did two
13 reports. We did a letter of opinion report
14 and then a more fulsome report of the rental
15 value based on the terms of the rent reset
16 option agreement or addendum. So there were,
17 I think, four reports prepared in total.

18 We also did the appraisal
19 requirements are unique in that if you --
20 even if you give a verbal value, you've
21 effectively or technically prepared a report,
22 so in speaking with the client in reviewing
23 Mr. Tener's report, although I don't believe
24 I ever prepared a full written rebuttal or
25 review of his report, I did have

1 S. Locatell
2 conversations with the client advising them
3 of the numerous and extensive errors in Mr.
4 Tener's report, both as relates to the
5 specific data assumptions he used and also
6 his complete misreading of the ground rent
7 addendum option as to how the renewal rent
8 was to be determined, so there were verbal
9 reports prepared for the client, as well.

10 Q. That's helpful. Thank you.

11 You said that the initial reports
12 that you prepared for the client in late 2018
13 dealt with the value of the property as a
14 development site.

15 Who asked you to do that?

16 A. Carol DeMarco asked for us to value
17 the land and Ellen Benjamin, who works very
18 closely with me who is an assistant
19 appraiser, put together the first sort of
20 tranches of data that we sent to them.

21 They were anxious to get an idea of
22 values and prior to the actual rent reset
23 coming up and so Ellen Benjamin of my office
24 put together the initial report and,
25 unfortunately, when she did that, she only

1 S. Locatell
2 included in her letter the first two bullet
3 points or paragraphs of the rent addendum
4 option that does not describe how you
5 actually have to do it, what the procedure of
6 setting the new rent is.

7 So she had put together land sales,
8 which was an incorrect method of analysis and
9 also Carol, because she doesn't do this,
10 that's why she hires us, she didn't
11 understand or know what the -- I'm assuming,
12 I don't want to say she didn't understand,
13 but when she asked us to do this, she said
14 you could put together some land sales and
15 rents and then told us to prepare the value
16 based on the ground lease option.

17 So the initial reports that were
18 done in late 2018 were sort of data from both
19 perspectives and they actually were data that
20 was incorrect relative to the rent addendum
21 option, so the reports, when we actually did
22 them for the rent addendum option in early
23 2019, are the reports that meet the terms of
24 the actual rent provision reset language.

25 MR. KOH: Please bring up what is

1 S. Locatell

2 No. 5 in the stack, which is marked as
3 exhibit -- it was previously marked as
4 Exhibit I.

5 Q. Ms. Locatell, can you tell us what
6 Exhibit I is?

7 A. Exhibit I is a document that was
8 prepared early in this case, in December 12,
9 2018 is the date, and it sets forth net lease
10 comps that we had uncovered as of that date
11 for comparison to determine the subject's
12 rental value for the five-year renewal term.

13 Q. On the page No. 5, which bears
14 Bates stamp MCD 00347, is that your
15 signature?

16 A. That is.

17 Q. Did you read this Exhibit I before
18 it was -- before you signed it?

19 A. Yes.

20 Q. And, thereafter, did you or someone
21 in your office send it to Mr. Meyer and Ms.
22 DeMarco?

23 A. I assume it was sent to them, yes.

24 Q. Is it your practice to sign --
25 strike that.

1 S. Locatell

2 Is it your practice to sign
3 correspondence before you are ready to send
4 it out of your office?

5 MR. WALSH: Objection to form.

6 A. I didn't say I wasn't ready to send
7 it out.

8 Q. I was just asking generally. My
9 question is, as a usual practice, do you wait
10 until you read the document and are ready to
11 send it out of your office until your
12 signature is affixed on the document?

13 MR. WALSH: Objection to form.

14 A. It's interesting you bring that up
15 because, you know, with the advent of
16 electronic signatures, it's something that
17 I'm constantly telling my appraisers. I
18 review hundreds of reports a year and that
19 when we send things out in draft, you have to
20 make sure the signature is not on it.

21 Yes, I would have reviewed this
22 prior to it being signed. What I was getting
23 at before is if you notice, page 2, page 2
24 only quotes from the lease A and B, which
25 does not direct you as to how you need to

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2 value this property. That's what I was
3 speaking to before, but this report had been
4 read by myself, I signed it and that's why it
5 went out.

6 Q. And since we are on page 2, if you
7 drop down, there is a section called Sales
8 (Rental) Comparison Approach.

9 Do you see that?

10 A. I do.

11 Q. Why is the word, rental, in
12 parenthesis?

13 A. That's what we are doing here, we
14 are doing a fair market rental value
15 determination and when you do that, you use
16 the sales comparison methodology. That is
17 just a methodology for how you determine
18 value. Most appraisals are done for sale
19 purposes, so the book, when they talk about
20 the steps that are required to come to a
21 conclusion of value, refer to them as sales.
22 The practice is you use the same methodology
23 when you are determining a rental value.

24 So for clarity, since we are doing
25 a fair market rental value, I'm showing here

1 S. Locatelli

2 what the methodology we are using and that's
3 why rental is in parenthesis.

4 Q. On that page and the page that
5 carries over, there are five numbered
6 paragraphs. Paragraph 3 says one of the
7 steps is to select relevant units of
8 comparison, e.g., price per square foot and
9 develop a comparative analysis for each unit.

10 Why is price per square foot an
11 important consideration?

12 MR. WALSH: Objection to form.

13 Q. Is price per foot an important
14 consideration?

15 MR. WALSH: Same objection.

16 A. Whenever you are doing a market
17 sales comparison approach, you look at the
18 data relative to how the market looks at it.
19 There is no prescribed method that says you
20 must look at something relative to price per
21 square foot or price per acre or price per
22 linear foot or total price.

23 What is important that you consider
24 is how does the market look at a property and
25 in our market, when you are looking at sites

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2 similar to the subject that can be leased for
3 a period of five years and you are looking
4 for rental value comps, typically, one will
5 look at price per square foot of site, they
6 will look at total price, but when you look
7 at the unit of comparison per square foot,
8 price per square foot is a metric that is
9 considered, but also the total price is
10 considered and so in this -- the steps of
11 this methodology will typically will tell you
12 to lay out the price per unit that you are
13 comparing.

14 And you will see, this is just an
15 example, price per square foot, this is not
16 saying in my report, the only way you could
17 look at the sale rental comps is by price by
18 square foot, but this is an example of how
19 the methodology is applied.

20 Q. In one of your earlier answers when
21 I asked you about the word, rental, in
22 parenthesis, you referred to a book, you said
23 most appraisals are done for sale purpose of
24 book.

25 When you talk about steps are

1 S. Locatell

2 required to come to a conclusion of value,
3 what book are you referring to?

4 MR. WALSH: Objection to form.

5 A. Can you read that sentence you
6 said?

7 Q. The way it said is as following:
8 Most appraisals are done for sale purposes,
9 so the book, when you talk about the steps
10 that are required to come to a conclusion of
11 value, referred to them as sales.

12 What book did you mean?

13 MR. WALSH: Objection to form.

14 A. The Appraisal of Real Estate.

15 Q. Were you thinking of a particular
16 section of that book?

17 A. No.

18 Q. So for this report that we are
19 looking at, the comparable rental leases
20 chart on page 4 identifies three purportedly
21 comparable leases, correct?

22 MR. WALSH: Objection to form.

23 A. Correct.

24 Q. Who found those comparable net
25 leases?

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2 A. I believe Ellen Benjamin of my
3 office found them.

4 Q. How long -- does Ellen Benjamin
5 still work for you, by the way?

6 A. Yes, she does.

7 Q. How long has she worked for you?

8 A. Twenty years.

9 Q. So would it be fair to say she is
10 an experienced real estate appraiser?

11 A. Yes.

12 MR. WALSH: Objection to form.

13 Sharon, if could you just give me a
14 second or two just to get an objection
15 so we don't talk over each other.

16 THE WITNESS: I apologize, I will.

17 MR. WALSH: Thank you.

18 Q. Ultimately, you concluded in this
19 letter, which we've marked as Exhibit I, that
20 the concluded market rent GBA was \$80, and
21 that's on page 5, right?

22 MR. WALSH: Objection to form.

23 Q. Does it say -- do you have page 5
24 in front of you?

25 A. I'm looking at it. Please give me

1 S. Locatell

2 a moment.

3 Yes, we concluded \$80 a total rent
4 of 300,000.

5 Q. What is GBA? Is that gross
6 building area?

7 A. It is.

8 Q. And can you explain to me what is
9 meant by gross building area?

10 A. It's the area of an improved
11 property, not the rentable area, but it is
12 the gross building area, basically outside
13 wall to outside wall.

14 Q. If there is a piece of land and it
15 has, for example, a parking lot and building,
16 the GBA would represent the footprint of the
17 building?

18 A. That is correct.

19 Q. And, here, you got to \$300,800 by
20 multiplies \$80 a square foot times 3,760,
21 correct?

22 A. That is correct.

23 Q. And the 3,760, where did that
24 number come from?

25 A. That's the existing GBA on the site

1 S. Locatell

2 and this is just so -- it seems like you
3 might be confused as to how the sites are
4 analyzed and valued.

5 Pad sites like this are looked at
6 by three different ways; total rent, which is
7 the metric that most tenants care about,
8 right, what's the nut I'm going to pay
9 annually. They are looked at rent per square
10 foot of the land and then they are also
11 looked at rent per square foot of building
12 size and, typically, a site like this, would
13 be improved with something that ranged from,
14 you know, three to 4,000 square feet.

15 So one way of analyzing these is
16 looking at -- for the rental value of the
17 land, is looking at what -- if you look at
18 all my comps, they all range from roughly
19 3,300 square feet to 3,800 square foot. This
20 is the size of these QSR-type buildings that
21 are built, but they -- so in analyzing what
22 they're paying for the land, it is
23 appropriate to look at what they paid for the
24 improvement, because when someone goes in and
25 rents one of these, quite often, you will see

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2 an existing freestanding restaurant there and
3 the lease will expire, a new tenant will come
4 in place, they will gut or take the building
5 down and build their own thing, but they will
6 build a building roughly the same size.

7 So the rent they pay for the site
8 itself can be looked at relative to per
9 square foot of GBA price, per square foot of
10 land price and total price and by all of
11 these metrics, the conclusion reached here is
12 very reasonable because, as you can see, the
13 total prices paid for the comps ranged from
14 121,000 per annum to 300,000 and the prices
15 paid on a land basis ranged from a little
16 over \$11 a foot to 15 a foot and if you take
17 my conclusion of 300,000, it makes sense on a
18 typical GBA building size, which I used the
19 existing building because it's a typical size
20 that would be built there, and it also makes
21 sense on a price per square foot per land and
22 makes sense on a total dollar basis. In
23 fact, I chose the highest range possible to
24 conclude for the subject based on these
25 comps.

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2 Q. I've heard your answer. My
3 question is, where did the 3,760 number come
4 from? Am I correct that that was the square
5 footage of the existing McDonald's on the
6 site?

7 A. And that's what I said in the first
8 few words of my answer. That's what I told
9 you, and it's also the size of what a typical
10 QSR or retail building that would be put on
11 this site is, so they're one in the same, but
12 the value that's being estimated here is the
13 value for the site, the land value, based on
14 the highest and best use considering the term
15 and so, by all metrics, whether you look at
16 it on a price per square foot of typical
17 building area, which, in this case, is equal
18 to the size of what the existing McDonald's
19 was or if you look at it on a price per site
20 basis or a total basis, the numbers all made
21 sense, but the conclusion I'm giving you
22 here, the 300,000, is a land rental number.

23 Q. You said that on this particular
24 site, what would typically be built if the
25 existing McDonald's was knocked down would be

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2 another building of similar size, is that
3 your testimony?

4 A. That is my testimony, yes.

5 Q. And how do you know that?

6 A. Based on the market data research I
7 did. I think you have my later reports where
8 I actually uncovered many more leases located
9 within similar areas of New York City for
10 sites of similar size and the buildings that
11 are built on them are in this range.

12 So it's not me making this
13 declaration. It's the data telling me that I
14 must make this declaration.

15 Q. Is it possible that another
16 appraiser who would look at this site might
17 conclude that a larger structure could be
18 built on the site?

19 MR. WALSH: Objection to form.

20 A. How much larger, what size
21 differential?

22 If you are referring to Mr. Tener's
23 position that someone would build, for a
24 five-year term, even with options, a 20,000
25 square foot retail street front property with

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2 parking underneath of it, absolutely not, but
3 if you are saying that instead of 3,760,
4 someone might build 3,200 square feet or
5 4,200 square feet, yes, I would say that the
6 size of the building could differentiate off
7 of the 3,760, but it's going to be within the
8 range of what the 11 comparables that I had
9 included in my final report, plus one listing
10 show. I found no -- and I searched this
11 market high and low for every type of
12 comparable asset, I did not limit myself to
13 buildings of this size, I looked for leases
14 of property that are similar in location and
15 if that had led me down the field of someone
16 building 10 to 20,000 square feet I would
17 have had those leases in my report, the
18 market had spoken and it spoke very loudly
19 that the size of what would be built at this
20 location is in the range of you know, what's
21 there now.

22 Q. So if any appraiser saw the
23 methodology that you described Mr. Tener
24 using, that appraiser would immediately
25 conclude that Mr. Tener was just wrong and he

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2 just missed the mark on this one?

3 A. That is my opinion, he is wrong
4 under many -- for many reasons, not just
5 because of the size of the building that he
6 is proposing to build here.

7 I'm not sure if he is actually
8 familiar or intimately familiar with this
9 area of Brooklyn. There is a very big
10 difference once you are east of Vanderbilt.
11 Even before that, once you are east of the
12 Barclays Center, the tenor and tone of
13 Atlantic Avenue changes dramatically for
14 retail space.

15 This is an automobile
16 traffic-driven location, you know, within a
17 few blocks of this property, most of what
18 exists there are auto repair service places,
19 there are CubeSmart Storage. This is not a
20 walk to. I live not far from here. I drive
21 by this location to actually get my tires
22 changed and my car serviced and if I see a
23 person walking past this McDonald's, that's
24 unusual. People do not walk to this
25 location, this is a drive-by location.

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2 That is why the highest and best
3 use of the property, given the term that's in
4 place, right, which, at best, is 20 years,
5 it's five years, by definition of the lease,
6 that's what we are talking about. So that's
7 something that we should be -- all be
8 concerned with.

9 But even if you assume they have
10 control for 20 years, no one is building a
11 20,000 square foot retail, street front
12 retail property here. You couldn't amortize
13 the cost of building it, tenanting it, trying
14 to find 20,000 -- a 20,000 square foot retail
15 user is nonexistent and the only retail uses
16 that can be shown to be in a demand in this
17 area are for small tenants and not at this
18 location.

19 Best case scenario, on the side
20 streets in either direction, there are some
21 activities for storefront to service some of
22 the residential tenants. The spaces are 400
23 square feet, maybe as much as 2,500 square
24 feet.

25 So by Mr. Tener's projection, you

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2 are going to have to find 10 tenants, best
3 case scenario. How many years do you think
4 it would take you to find 10 tenants? There
5 are building across the street that have been
6 vacant for years, new construction. The
7 assumptions are -- they are very not
8 credible, which is language that refers to
9 how appraisals should be considered and
10 reviewed.

11 The assumptions he makes do not
12 hold up. By his own admission in his report,
13 the comps he put in there range from, I
14 think, 400 to 2,200 square feet, so there is
15 no way that that property would be built and
16 tenanted.

17 You assume you have the keys April
18 1, 2019. It's going to take you 18 months to
19 get approvals before you put a shovel in the
20 ground, then it takes at least a year to
21 build it, so you are already two, two and a
22 half years down the road of your five-year
23 lease. Even it's a 20-year lease, he has 18
24 left. How long would it take you to find 10
25 tenants at this location that is a

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2 non-pedestrian-driven retail location, right?

3 How many years? It could easily take you

4 three years.

5 So then you are five years, six

6 years into a 20-year lease term before you

7 collect a dime. He doesn't take leasing

8 commissions off, he doesn't take free rent

9 off or downtime, he doesn't take tenant

10 installation. His construction costs are

11 absurdly low.

12 So I just -- I really feel that any

13 active impartial appraiser that looked at

14 this site and knew that you had control of it

15 for 20 years would not make the assumption

16 that Mr. Tener did.

17 That's putting aside the whole

18 issue of the lease directing us to consider

19 comparables. That's what the lease directs

20 us to do. It does not direct us to do the

21 land residual. You only do the land residual

22 if there is no comparable data available.

23 I showed there were 11 pieces of

24 information, all of which I shared with Mr.

25 Tener.

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2 Q. Have you completed your answer?

3 A. I have, yes.

4 Q. Excellent.

5 MR. KOH: Let's bring up the
6 document in my stack No. 6, which was
7 previously marked at Exhibit H.

8 Q. Can you tell us what Exhibit H is?

9 A. This is the -- there were two
10 documents prepared in December 2018 and this
11 is the second of them and this is what I was
12 referring to earlier. These set forth land
13 sales of the subject site and this does not
14 meet the requirements of the lease, market
15 rent addendum option, although it does,
16 mistakenly, refers to it and it refers to
17 only A and B of the rent addendum option --
18 it only refers to A and B, which gives you
19 the percentage of fair market rental of the
20 demised premises and gives you the five-year
21 option rent that is currently being paid, but
22 it doesn't tell you the method by which you
23 are required to determine the rent under the
24 rent option agreement, so, unfortunately,
25 this report was -- is an error basically, but

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2 that's what it includes.

3 Q. Did you read this report when you
4 sent it out?

5 A. I did.

6 Q. You signed it?

7 A. I did.

8 Q. Including its addendum, it's 13
9 pages long, right?

10 A. Right, but it does not include the
11 language, this is my point. I read this
12 report. This report was prepared by Ellen
13 Benjamin, was written by Ellen Benjamin, I
14 reviewed it and I read A and B without
15 reading the other part of the rent addendum
16 option. She did not put it into the report.

17 Q. So it's Ellen's report?

18 A. I'm not ascribing fault. What I'm
19 saying is what happened. I'm giving you the
20 facts. This report was put on my desk to
21 review and I did review it and what was
22 included as a description was that we would
23 determine 80 percent of the fair market
24 rental value of the demised premises -- that
25 we were to determine 80 percent of the fair

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2 market rental value of the demised premises
3 exclusive of improvements.

4 She neglected to copy the following
5 paragraphs of the rent addendum option that
6 described what we actually were supposed to
7 do, which was give consideration to the
8 term -- excuse me, recognizing that the
9 analysis was as encumbered and then, also to
10 use rent comps.

11 So when I read this, it seemed
12 reasonable that she would have looked for
13 sales.

14 I also recall that Carol had asked
15 us to do a sales search.

16 Q. Please continue.

17 A. That's it.

18 Q. Did Carol say why she wanted a
19 sales search done?

20 A. No, but, typically, so you
21 understand the process that I have when I
22 work for McDonald's is they will, either by
23 phone call or email, ask me to do something
24 and, quite often, they will call me and say,
25 can you give me sales, can you give me rents?

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2 I don't know, I am never involved in their
3 negotiations, so to speak, initially, unless
4 it goes to the point of, you know, involving
5 a third appraiser.

6 Typically, they just say, here is
7 the property, can you tell me what the fair
8 market rent is? Can you tell me what the
9 sale price is? And sometimes they're in
10 negotiations with the landlord to sell a
11 property, sometimes they're in the
12 negotiations to buy a property, so it's not
13 unusual for them to ask me to give them some
14 number that's not in direct relation to what
15 the language of the lease says and I just do
16 what they ask because that's what they hire
17 me for, is just to give them opinions of
18 value.

19 So that's my recollection, is that
20 Carol had asked me for land sales and when
21 Ellen put this report on my desk, I read it
22 and it makes perfect sense that she would
23 have uncovered land sales because it did not
24 include the entirety of the option language
25 in it.

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2 Q. You read and signed both Exhibit I,
3 which we just looked at, and Exhibit H on the
4 same day, correct?

5 MR. WALSH: Objection to form.

6 Q. They are both dated December 8,
7 2018.

8 Is it accurate to say that you read
9 it and signed both Exhibit H and Exhibit I on
10 the same day?

11 MR. WALSH: Same objection.

12 A. The reports are dated the same day.

13 Q. The second paragraph of Exhibit H,
14 you write, The rent renewal --

15 A. The documents are -- when you say
16 I, they are numbered on my screen?

17 Q. I will try to address that.

18 Did you read and sign the document
19 which, on your screen, is numbered Exhibit 5
20 and Exhibit 6, both on December 12, 2018?

21 A. They are both dated December 12,
22 2018, yes.

23 Q. And it's usually your practice to
24 make sure that the date you sign it is
25 accurately reflected on the letter, right?

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2 A. That is my practice, yes.

3 Q. On the second paragraph of what is
4 on your screen, No. 6, and was previously
5 marked as Exhibit H, it reads the following:
6 The rent renewal -- excuse me. Let me say
7 that again. The renewal rent is to be
8 determined in accordance with the ground
9 lease (lease) agreement dated March 18, 1998
10 between Anthony M. Musto, Landlord and
11 McDonald's Corporation, Tenant.

12 Does Exhibit H, document No. 6,
13 actually do that?

14 A. It does not -- I'm sorry, hold on.
15 Let me look at No. 6 here and see. It does
16 not do that.

17 Q. So that's a mistake in the second
18 paragraph of the letter?

19 A. Yes, that's what I was explaining
20 to you.

21 Q. And, here, you do a zoning
22 analysis, but you didn't do the land sales or
23 rental analysis that you did in the other
24 December 12th letter, correct?

25 MR. WALSH: Objection to form.

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2 A. Correct.

3 Q. Here, you conclude a land value of
4 9.9 million, that's what it shows on page 9?

5 A. Correct, that is a land value,
6 assuming the site is vacant and unencumbered
7 of any leases, which is why I'm explaining
8 that this does not meet the terms of the rent
9 option addendum.

10 Q. Even though it says it was done
11 according to the rent option addendum, you
12 say it doesn't meet the terms of the rent
13 option addendum, right?

14 MR. WALSH: Objection to form.

15 A. Yes, I had told you that several
16 times. This did not include all of the
17 language of the rent option addendum, so this
18 has an error in it. The report is in error
19 because it does not set forth the fair market
20 rental value of the subject premises per the
21 fair rent option addendum. I hate that
22 phrase.

23 Q. In any event, with -- putting aside
24 that error, you used a multiplier off the
25 land value to come up with a fair market

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2 rental value here, correct?

3 A. Correct.

4 Q. And you use a range of between 4
5 and 6 percent, right?

6 A. That is correct, that is market
7 range.

8 Q. What did you do to satisfy yourself
9 that that was the appropriate market range?

10 A. I am quite often hired by landlords
11 and/or tenants to help in structuring and
12 negotiating ground leases over the last
13 couple of years, so I'm quite familiar with
14 what current rents -- ratios are for rent
15 value relative to land value, so based on my
16 experience and my knowledge of the market,
17 that's the range that I've indicated.

18 I should point out that a 6
19 percent -- I have seen very few leases as
20 high as 6 percent. Most of them are in the
21 range of 4 to 5 percent over the last couple
22 of years and that is, you know, these rates
23 are tied to the market, they are no different
24 than telling someone what the rental value or
25 the sale price value of their property is.

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2 You can't -- if you are asking me
3 the value of something as of 2019, the
4 information that I need to consider is what
5 was the market like in 2019, what were prices
6 paid for rents or sales as of 2019. I would
7 never go back and look at sale prices for
8 1962 to tell you what your property is worth
9 in 2019.

10 So the ratios that apply to rental,
11 land rental value are no different than any
12 other piece of market data. They are tied to
13 a specific date of analysis and as of our
14 date of value, this range was very
15 reasonable.

16 Q. Would an 8 percent range be
17 reasonable?

18 A. Absolutely not. It would be if you
19 had signed a lease in 1954, and those are the
20 leases that Mr. Tener refers to when he says,
21 I think he has got somewhere access or he's
22 read somewhere between 30 and 40 leases,
23 which I could only assume came from Tracy
24 Nigard because I know she keeps those leases.
25 Those leases were written, you know, 50 to 70

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2 years ago, and back then, the ratio of rental
3 value to land value was much higher, the
4 interest rate environment was higher back
5 then and those rates or that ratio that is
6 included in ground leases is no different
7 than any real estate pricing metric, it's
8 tied to the market, which is tied to the data
9 value.

10 So it's egregiously -- it is an
11 egregious error on Mr. Tener's part to look
12 back at historical ground leases from 50 to
13 70 years ago and to opine that those rates
14 are applicable in 2019.

15 Q. So would it be fair to say that any
16 confident neutral appraiser who was --
17 noticed that Mr. Tener used an 8 percent
18 multiplier would immediately conclude that
19 that was an egregious error?

20 A. Any neutral would determine it's an
21 egregious error to use comparables that are
22 50 to 70-years old.

23 Q. Can you answer my question now?

24 Would it be fair to say any neutral
25 who noticed that Mr. Tener used an 8 percent

1 S. Locatell

2 multiplier would immediately conclude it was
3 an egregious error?

4 MR. WALSH: Objection to form.

5 A. I think most neutrals would agree
6 with that, yes.

7 Q. Now, we have two appraisals here
8 dated December 12th and one of them, December
9 12, 2018. One of them comes up with a fair
10 market rental value of \$300,800 and another
11 one comes up with a range of 396,000 to
12 \$594,000.

13 You signed both of these on the
14 same day. Which is correct?

15 A. The 300,000.

16 Q. Why did you sign the one that used
17 a multiplier off a land value which we are
18 looking at right now, which was marked as
19 Exhibit H, and is document 6 on your screen?

20 A. The document 6 was done under the
21 assumption that the land would be controlled
22 by the tenant in perpetuity, so it makes
23 complete sense that you would have a
24 different value for the subject site if you
25 were given the keys on April 1, 2019 and told

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2 you have it forever, you own it forever,
3 versus what's the site worth if I give you
4 the keys on 2019 and tell you that you have
5 it for five to 20 years, so, obviously, there
6 is going to be a differential in value.

7 For some unexplainable reason, Mr.
8 Tener seems to think that owning a site in
9 perpetuity is equal to owning it for 20 years
10 and I mean --

11 Q. Let's talk about --

12 MR. WALSH: Objection. Howard, she
13 wasn't finished talking. If you could
14 let her finish her answer.

15 MR. KOH: I'm happy to.

16 A. I think that it's incredulous for
17 an active market participant, experienced
18 appraiser to say that the value of an
19 unimproved site that you control forever is
20 equal to the value of a site that you can
21 control for, at best, 20 years.

22 Q. And would most competent neutral
23 appraisers do you believe would agree with
24 you?

25 A. I do. I think anybody involved in

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2 real estate would agree with me.

3 Q. So it's that obvious?

4 MR. WALSH: Objection to form.

5 Are we talking about, Howard, this
6 particular property or any property?

7 MR. KOH: Excuse me, when I need
8 your help, Mr. Walsh, I will ask you for
9 it. Right now, I'm asking you just to
10 confine your objections to form.

11 MR. WALSH: Thank you. I will make
12 my objections as I see fit and I stand
13 by my objection.

14 Q. The question was, you said, I think
15 it's incredulous for an active participant,
16 active market participant, experience
17 appraiser to say the value of an unimproved
18 site that you control forever is equal to the
19 value of a site you can control for 20 years.

20 Then I asked you, would most
21 competent neutral appraisers you believe
22 would agree with you? You said, I do. I
23 think anybody involved in real estate would
24 agree with me.

25 I said, so it's that obvious?

1 S. Locatell

2 Can you please answer my question?

3 MR. WALSH: Same objection.

4 A. It is to me and to active real
5 estate professionals, that if you control a
6 property in perpetuity versus being able to
7 control it for 20 years, meaning, you have no
8 reversion value, that there is greater value
9 to owning something forever than there is to
10 owning something for 20 years.

11 So if you compare them, you are
12 basically saying, if I own something forever,
13 I can build what I want, I will get that cash
14 flow for that 20-year period and at the end
15 of that 20-year period, I still own that
16 property, so there is value to the reversion.

17 In comparison to saying you own the
18 property for 20 years, so you get the cash
19 flow for 20 years, no reversion. That's the
20 differential.

21 And I think that if you set those
22 metrics out to an active, knowledgeable real
23 estate investor or professional, they will
24 tell you that it is more valuable to own
25 something that has a reversion versus owning

1 S. Locatell

2 something that does not have a reversion.

3 Q. So is it fair to say the way you
4 square these two substantially different
5 values is that the one that has \$300,800 as
6 an annual fair market rent accounts for the
7 limited term of the McDonald's lease and the
8 one that has the higher values does not
9 account for the limited term of the
10 McDonald's lease, right?

11 MR. WALSH: Objection to form.

12 A. In part.

13 Q. Explain what else is -- what other
14 things you rely on to square them?

15 A. Well, that is the difference. The
16 difference is that in the first instance, we
17 looked -- and when I say first instance, I
18 mean in document 5, that analysis was
19 prepared in agreement with the rent addendum
20 option, rent option addendum.

21 Q. Right.

22 A. And in the instance as relates to
23 document 6, that does not meet the terms of
24 the rent option addendum.

25 Q. Even though it mistakenly says it

1 S. Locatell

2 does?

3 A. Yes, it mistakenly says it does,
4 but as I've told you, it doesn't include all
5 of the language.

6 And for context, just so you
7 understand, these analyses, these reports
8 were meant to be initial analyses. We were
9 always understood to be determining this for
10 the rent reset once the date approached. So
11 these initial analyses were, in part --
12 they're, in part, incorrect because they
13 don't include the totality of the rent option
14 agreement.

15 But, in addition, Ms. DeMarco did
16 ask for us to look for sales, so we would
17 have done that as a matter of course. What
18 should not have been done is made the sales
19 analysis reference the rent option language,
20 so whether it's an error in that the entirety
21 of the language, rent option addendum
22 language is not included or that any of the
23 language should have been taken out of the
24 report, I'm telling you either of those
25 scenarios would have served to make this

1 S. Locatell
2 reasonable and it's just a hypothetical as to
3 what is the value of the land without the
4 lease in place, that is what this analysis
5 is.

6 Q. Did you bill separately for these
7 two letters on an hourly basis or was this
8 included as part of the base appraisal fee
9 that's described in P 39?

10 A. I don't recall. I would have to
11 look back at my billings. Typically, we bill
12 for the report -- we would have billed for
13 the final report for the rent reset
14 provision.

15 The one that was done in June, that
16 would have been for the flat fee and anything
17 they asked us to do in terms of looking for
18 sales, you know, reviewing Mr. Tener's
19 records, attending meetings, would have been
20 billed hourly.

21 Q. There is some handwriting on both
22 of these exhibits, 5 and 6. On what is No.
23 6, it says, delivered vacant/redevelopment
24 site.

25 Whose handwriting is that?

1 S. Locatell

2 A. That is Ellen Benjamin's
3 handwriting.

4 Q. When did she write it on this, if
5 you know?

6 A. I have no idea.

7 Q. On what we have marked as Exhibit 5
8 or is on your screen as Exhibit 5, Exhibit I,
9 there is handwriting. It says, net lease
10 comps.

11 Is that also Ms. Benjamin's
12 handwriting?

13 A. That is.

14 MR. KOH: We've been going for
15 about 90 minutes. I think now is
16 probably a good time to take a short
17 break to give Leslie a rest and
18 everybody else.

19 How long would you like, five, 10
20 minutes I think is appropriate?

21 THE WITNESS: Fine with me.

22 (Recess.)

23 MR. KOH: Let's please bring up,
24 Nat, No. 7 in the stack, which was
25 previously marked as Exhibit O. It is

1 S. Locatell

2 an April 15, 2019 letter from Mr. Meyer
3 to Tom Li.

4 Q. Ms. Locatell, have you seen this
5 letter before?

6 A. Yes, I have.

7 Q. Did you see it at the time it went
8 out or subsequent?

9 A. I believe I -- if I didn't see it
10 the day of April 15th, I saw it sometime
11 around then.

12 Q. This is the letter that identifies
13 you as the appraiser for McDonald's with
14 respect to 840 Atlantic Avenue, right?

15 A. That's correct.

16 MR. WALSH: Objection to form.

17 Q. Is the -- I would like to focus on
18 the last paragraph on the first page which
19 begins, The appraisers must meet.

20 Is it your understanding that that
21 was an accurate description of what was
22 required under the option rent addendum which
23 we previously looked at and is No. 4 in your
24 stack marked as Exhibit D?

25 MR. WALSH: Objection to form.

1 S. Locatell

2 A. Yes.

3 Q. So Mr. Meyer writes, The appraisers
4 must meet and exchange letters of opinions of
5 value within 20 days of the date of this
6 letter.

7 Did that happen?

8 MR. WALSH: Objection to form.

9 A. I don't recall when Tom and I
10 exchanged our values or met and talked about
11 our values. It was sometime in April, early
12 June of 2019.

13 Q. Was it April or early June? That's
14 a pretty big spread. Do you recall?

15 A. I said it was sometime in April or
16 early June. It's not that big of a spread.
17 In these procedures, it is very common for
18 both sides to agree to an extension of some
19 amount of time, depending on what the
20 appraisers are specifically involved in and
21 what their workload is, so it happened timely
22 and it happened within, you know, let's call
23 it two or three weeks, but I don't recall the
24 exact date.

25 Q. Why don't we go over exactly what

1 S. Locatell

2 did happen shortly thereafter.

3 MR. KOH: Let's bring up what was
4 previously marked as Exhibit P, I
5 believe.

6 Q. Exhibit P is an April 25, 2014 --
7 April 25, 2019 email that Ms. Locatell sent
8 to Ms. DeMarco and Ellen Benjamin.

9 Do you recognize this email, Ms.
10 Locatell?

11 A. This looks like an email that I
12 sent to Carol and Ellen.

13 Q. And you say, I spoke with Tom
14 Tener. His side is pushing for us to select
15 the third appraiser. I told him I'm not
16 ready, that I need to do work and circle back
17 with him the first full week of May.

18 What weren't you ready to do?

19 A. I don't recall. I may not have
20 been ready to select a third. I know at this
21 time, I was extremely busy, I had at least
22 another one or two large projects going on,
23 so I don't recall. I just wasn't ready to
24 meet with him and select a third. We usually
25 do that live, as appraisers in these

1 S. Locatell

2 proceedings, so...

3 Q. Then you write, I will call you
4 next week to discuss the next -- led me read
5 that accurately. I will call you next week
6 to discuss next steps. In the meantime,
7 Ellen will continue to work on collecting new
8 data.

9 What were the next steps?

10 A. The third appraiser that we were
11 going to select. In these proceedings, you
12 typically confer with your client as to
13 recommendations for the selected neutral, you
14 have to come up with a list. It's unusual
15 that both sides will agree on the -- on one
16 person, so you typically want to go through a
17 list of people that you think would be
18 experienced enough and understand the
19 property to serve as a neutral and you need
20 to discuss that with your client, so I'm
21 assuming that that's what I may have been
22 referring to, but, again, this was over two
23 years ago, so I don't know specifically.

24 Q. Am I also right, one of the reasons
25 you need to discuss the potential neutral

1 S. Locatell

2 third appraiser is to make sure there are no
3 conflicts?

4 A. Yes.

5 Q. That's not the only reason there
6 are other reasons, too, right?

7 MR. WALSH: Objection to form.

8 Q. Are there other reasons besides
9 just conflicts?

10 A. I mentioned what the other things
11 that you would concern yourself with. You
12 would want to make sure that the person is
13 experienced in the market in which your
14 property is located, you want to make sure
15 that the person has experience in doing the
16 type of analysis that we are talking about.
17 Not every appraiser has served as a neutral
18 before. There may be appraisers who are very
19 well versed in this area of Brooklyn, but
20 they may not have served on a case before.

21 So you discuss all of these pros
22 and cons and try to come up with a list of
23 people that you feel would be responsible to
24 take on this role and you clear that list
25 with your client. I'm sure Tom did the same

1 S. Locatell

2 thing with his client.

3 Q. So it wouldn't surprise you to
4 learn that Tom did, in fact, did the same
5 thing with Vanderbilt Atlantic?

6 MR. WALSH: Objection to form.

7 A. No.

8 Q. In the last sentence of this brief
9 email that was sent by iPhone, you write, In
10 the meantime, Ellen will continue to work on
11 collecting new data.

12 Why did new data need to be
13 collected?

14 A. Again, as you see in my report, my
15 June report, we set forth a very
16 comprehensive list of data, we didn't want to
17 miss anything, so we began collecting data
18 when we were retained in late 2018 and that
19 process continued through the preparation of
20 our report.

21 We collected data that confirmed,
22 generally, our original opinion of the rental
23 value of the site per the rent option
24 addendum, but it's not a static process. We
25 had been doing our initial research prior to

1 S. Locatell

2 the date of value, which is April 1, 2019, so
3 the valuation date had just passed here by 24
4 days and throughout -- from late 2018 until
5 this date, we had our feelers out for
6 comparable data that we could use to
7 determine the value, so that is not anything
8 that would be considered unusual. In fact, I
9 think it would be considered necessary to
10 produce credible results.

11 Q. Am I correct that the preparation
12 of these appraisals is an evolving process
13 where, as more data is collected, that is,
14 you know, ultimately informs what the final
15 appraisal numbers are?

16 MR. WALSH: Objection to form.

17 A. An evolving process, yes, I would
18 say from when you take on assignment to when
19 you complete it, you are looking for data.

20 If I take on assignment in late
21 December 2018 and I give them sort of a draft
22 opinion of value, but my valuation date
23 hasn't even occurred yet, I will continue to
24 be looking for comparable information that
25 could be used in my report. Once the report

1 S. Locatell

2 is complete, then one would typically stop
3 looking for that information.

4 Q. As you work through this process,
5 your initial value might change, right?

6 A. Well, remember that the -- when I
7 did the initial value, I was doing it prior
8 to the valuation date, right, so, yes, my
9 valuation did change once the valuation date
10 came and passed.

11 Q. So in that case, you initially
12 valued the fair market rent at \$300,000, but
13 the ultimate appraisal you issued on this
14 came in at a higher number, right?

15 A. That's right, 350,000, I believe.

16 Q. Depending upon how the market went,
17 it could also come in lower, correct?

18 MR. WALSH: Objection to form.

19 Q. It was just, in this case, in your
20 professional opinion as an appraiser, given
21 the passage of time and the new data, you
22 wanted to raise the value from 300,000 to
23 350,000, is that fair to say?

24 A. Correct, based on the data that I
25 uncovered in preparation of my final report,

1 S. Locatell

2 my concluded value was 350,000.

3 MR. KOH: Let's mark the next
4 document. Bring it up, please. This
5 was previously marked, I'm sorry, as
6 Exhibit Q, it is a May 6, 2019 email
7 from Ms. Locatell to Ms. DeMarco.

8 Q. Do you know what this document is?

9 A. It is two emails, one sent from
10 Carol to myself and Ellen and one sent from
11 myself to Carol and cc'ing Ellen Benjamin.

12 Q. I would like to focus on the top
13 email, May 6th, from you to Ms. DeMarco with
14 a copy to Ellen.

15 Again, Mr. Tener, you write, has
16 reached out and wants us to pick the third
17 appraiser. He is getting pressure from his
18 client to do so. I told him we could do it
19 later this week and reminded him that our
20 deadline is May 20th, so we, in fact, have
21 sometime, right?

22 A. Correct.

23 Q. As of the date of this email, May
24 6th, had you conferred with McDonald's about
25 the selection of the third appraiser?

1 S. Locatelli

2 A. I don't recall.

3 Q. In the next paragraph, you write,
4 Ellen has been working on rezoning scenarios
5 and has spoken with a land use attorney for
6 some general guidance. I think that we may
7 need to hire them to write a letter in
8 defense of our lower rezoning potential,
9 cost, timing, et cetera.

10 Can you explain to me -- first of
11 all, was a land use attorney hired?

12 A. Not to my knowledge.

13 Q. Did you ever find out why a land
14 use attorney was not hired?

15 MR. WALSH: Objection to form.

16 A. No.

17 Q. Did you ever discuss that with any
18 representative of McDonald's?

19 A. Discuss why a land use attorney had
20 not been hired?

21 Q. Correct.

22 A. Not to my recollection.

23 Q. Who was the landlord -- I'm sorry,
24 who was the land use attorney Ms. Benjamin
25 was speaking to?

1 S. Locatelli

2 A. I don't recall. We did a lot of
3 work with land use attorneys across all the
4 major firms in the City, I don't remember who
5 she spoke with.

6 Q. You write that you thought that you
7 may need to hire them to write a letter in
8 our defense of a lower rezoning potential.

9 What is a lower rezoning potential?

10 A. That refers to density.

11 Q. Why was that something that was
12 important with respect to this assignment?

13 A. So this goes back to Mr. Tener's
14 misunderstanding of the rent option addendum
15 and the fact that he valued the property as
16 unencumbered of the lease itself, meaning,
17 that if you were to rent it, you would have
18 it in perpetuity and that is, as I discussed
19 I think earlier today, the -- not correct, as
20 the lease states.

21 Tom and I had spoken about where we
22 were by this point in terms of value and he
23 explained to me how he was valuing the site
24 and so in -- assuming we were going to a
25 neutral, I was prepping McDonald's for sort

1 S. Locatell
2 of rebuttal review work we may need.

3 This subject property, No. 1,
4 should not have been valued as a development
5 site, that is not what the lease allows for,
6 that is not what the lease calls for and it
7 does not meet the terms of the rent reset
8 provisions. However, Mr. Tener incorrectly
9 had done it that way, so I wanted to have an
10 understanding of looking at the site as if
11 vacant and unencumbered of a subject lease,
12 even though it's in contravention of what the
13 actual lease says, what would the rezoning
14 potential of the site be?

15 Q. Why did you need to understand what
16 the rezoning potential of the site would be
17 if that was in contravention of what the
18 lease said?

19 MR. WALSH: Objection to form.

20 A. To be frank, this is why clients
21 hire me, I'm very good at what I do and I do
22 the research for review and rebuttal. I do
23 the research to see how the other side looks
24 at data.

25 Mr. Tener is fully incorrect, he is

1 S. Locatell

2 completely incorrect in how he analyzed this
3 property. He assumed that the rent should be
4 paid based on the idea that you will control
5 the land in perpetuity. That is not, in
6 fact, the case, and when he did that, he
7 compounded the error by saying, I'm going
8 also to look at the site as it's vacant and
9 I'm going to look at the site, assuming it
10 has been rezoned, which it had not been
11 rezoned.

12 So I was understanding and wanted
13 to give McDonald's the information that even
14 if the site were to be looked at as a vacant
15 and unencumbered, how Mr. Tener was even
16 incorrect in making the assumptions that he
17 had made.

18 So this is just what I'm hired to
19 do when I get hired for these assignments to
20 act as a tenant or landlord appointed
21 appraiser. It's to not only prepare the
22 accurate analysis based on the terms of the
23 lease, but it's also to review and rebut what
24 the other side says and part of my review and
25 my rebuttal of Mr. Tener's analysis was that

1 S. Locatell
2 not only was he completely incorrect in what
3 he had done, but he also was incorrect in
4 even the assumptions he had made within his
5 own document.

6 Q. Well, why would there need to be a
7 rebuttal if any qualified appraiser would be
8 able to look at what Mr. Tener had done and
9 conclude it was obviously an egregious error?

10 MR. WALSH: Objection to form.

11 A. Again, I'm very good at what I do
12 and what I do is I analyze everything. I
13 don't leave things to be unreviewed, right,
14 so part of my assignment is to act as sort of
15 a research person for McDonald's.

16 So Mr. Tener is saying X and I'm
17 going to show you why he is incorrect, and I
18 would have been remiss had I not pointed out
19 all the errors in his report and his
20 analysis, so it's part and parcel of acting
21 as an appraiser in an assignment like this
22 and I don't know anybody who would not have
23 done some sort of rebuttal or review of the
24 oppositions report when you are acting as an
25 appraiser in an assignment to set a rent for

1 S. Locatell

2 revalue purposes.

3 So although Mr. Tener is completely
4 incorrect at step 1, right, the gateway issue
5 here is, what the does the lease tell us to
6 do? The lease tells us to value the rent for
7 the land for the subject to the lease itself.
8 That means, at best, you own the land for 20
9 years, you controlled the land for 20 years,
10 five years, really, but 20, at best. Mr.
11 Tener did not do that.

12 But in addition, below the gateway
13 issue, he also has a series of errors in his
14 report, so my review and my work involved
15 pointing out those errors to McDonald's.
16 They can do with it what they want, but they
17 asked me to review his report, so that is
18 what I did.

19 Q. So you recommended this to
20 strengthen the advocacy position that
21 McDonald's was taking in connection with this
22 fair market value reset?

23 MR. WALSH: Objection to form.

24 A. Again, this is not an advocacy
25 position. This is -- we are hired as

1 S. Locatell

2 appraisers, we are subject and bound by
3 ethics rules. We are supposed to be
4 competent in what we do, we are supposed to
5 be credible and we are supposed to prepare
6 reports that meet a basic level of standards
7 at a minimum and I am not advocating for
8 McDonald's when I tell you that the lease --
9 the rent option states that you must consider
10 the lease itself, that it is not unencumbered
11 of the lease and that you are directed to use
12 as evidence for the rent to be determined for
13 this five-year period, lease comparables of
14 similar property. That is what the lease
15 tells us to do. I am not advocating for
16 McDonald's when I follow those directions.

17 Whether Mr. Tener was advocating
18 for his landlord, I will leave you to make
19 that opinion, but I was not advocating for
20 McDonald's position. I was hired to tell
21 McDonald's what the fair market rent would be
22 for the renewal and I have done that for them
23 on other occasions.

24 They always just give me the lease
25 and ask me to do the analysis. On occasion,

1 S. Locatell
2 they will say, can you provide me with sales,
3 as well, can you provide me with rents? I do
4 that. I do it based on what I think the
5 market tells me to do, which is what I'm
6 required to do as an appraiser. I am not
7 acting as an advocate.

8 Q. Why did you need a defense of a
9 lower rezoning potential?

10 MR. WALSH: Objection to form.

11 A. I'm not sure. You are picking out
12 a word I wrote in a sentence. It's my
13 opinion that, putting aside the lease, if
14 there was no lease in place here and I was
15 looking at the site as a vacant site the way
16 Mr. Tener did, there appears to be a
17 potential for a rezoning.

18 Mr. Tener was assuming it was going
19 to be, I believe, spot rezoned, and I would
20 have to go back and check the reports and
21 analysis. It's my understanding that the
22 community board in which this property lies
23 was very vocally against the rezoning that
24 was being put forth for this site and for the
25 larger end crown rezoning.

1 S. Locatell

2 As you may be aware if you are
3 active in the real estate market in New York
4 City, community boards are sort of a gating
5 body that you have to get through for any
6 rezoning, whether it's a spot rezoning or
7 rezoning in its entirety and, you know, the
8 trend recently has been for extreme pushback
9 by residents and neighborhood for rezoning.
10 They are tired of having their neighborhoods
11 -- the community boards and the residents
12 have become very vocal in opposition to
13 rezonings.

14 So that was what I was researching
15 or advising McDonald's on, but it had no
16 relationship to my opinion as supported by
17 the market and as supported by the lease
18 itself, that Mr. Tener's analysis was
19 inapplicable and inappropriate and not
20 credible for the purposes of resetting the
21 rent for this rent option, period.

22 Q. You also said, write a letter in
23 our defense of a, and we talked about lower
24 rezoning potential. Then you say, cost and
25 timing, et cetera.

1 S. Locatell

2 What is included in those concepts?

3 A. To get a property rezoned is no
4 small matter. You typically -- you have to
5 go through what's called the ULURP, the
6 Uniform Land Use Review Process, which is a
7 public process which, at a minimum, takes 18
8 months to two years, it can take much longer
9 than that. It cost hundreds of thousands, if
10 not more in legal fees and architectural fees
11 to effectuate such a rezoning.

12 And so I think that Mr. Tener, in
13 making this broad assumption that the subject
14 could just, you know, like this, become
15 rezoned to a higher density, was not
16 reflecting for all the actual costs and time
17 which is also a cost involved in getting a
18 property spot rezoned.

19 Q. As of May 6, 2019, what you knew of
20 Mr. Tener's thinking was based on what he had
21 told you sometime between April 15th and May
22 6, 2019, right?

23 MR. WALSH: Objection to form.

24 Q. Had you seen anything in writing
25 from Mr. Tener relating to this property as

1 S. Locatell

2 of the date of this email, May 6, 2019?

3 A. I don't recall if we had exchanged
4 any data or reports by this time. I don't
5 think we had, but we had certainly talked
6 about our valuations.

7 MR. KOH: Let's bring up Exhibit R,
8 which is No. 10. It's also a May 6,
9 2019 email.

10 Q. Do you recognize this document, Ms.
11 Locatell?

12 A. Yes, it appears to be emails that
13 Carol -- that I sent, I guess, to Carol,
14 Carol responded to and then I then responded
15 to and Ellen Benjamin is cc'd.

16 Q. I would like to start looking at
17 this on the second page of this document. It
18 bears Bates No. 2953 and the bottom email at
19 2:57 is an email from you to -- from Ellen
20 Benjamin to you and she says that Sharon is
21 asking for recent net leases signed by
22 McDonald's. I told her you were going to get
23 us information on the following, and then
24 there is a list of sites.

25 Why -- did you have an

1 S. Locatell

2 understanding of why Ellen Benjamin would be
3 going to Carol DeMarco for net lease data?

4 A. Well, Carol acts -- I'm not exactly
5 sure what her title is, but she has a lot of
6 relationships with brokers in the region, in
7 the market and so it would not be unusual, in
8 doing an assignment like this, to ask for
9 comparable data that they may be aware of
10 that could be useful in the analysis.

11 Q. Were these leases -- before I ask
12 that question. Is it unusual for an
13 appraiser to ask their client to provide them
14 with data?

15 A. Not at all.

16 Q. There is nothing improper about
17 that, right?

18 A. No. In fact, if your client is
19 active in the market, I think it would be
20 improper to not ask them about data of which
21 they are aware of.

22 Q. And the data specifically that you
23 were seeking were net leases signed by
24 McDonald's, right?

25 MR. WALSH: Objection to form.

1 S. Locatell

2 A. In this email, yes, but just to be
3 clear, that was not the limitation. This
4 email was in response to, I believe a
5 conversation that Ellen had with Carol or I
6 had with Carol where she mentioned -- I had
7 asked her whether any new leases in the
8 region had been done because they do lease
9 renewals quite often. I'm looking
10 specifically in this timeframe.

11 Unlike Mr. Tener, I'm not looking
12 for deals done in the '50s and '60s, but I
13 was looking for lease deals that had been
14 done around this timeframe, and I think she
15 had mentioned these spaces or these locations
16 as being deals that had been, she thought,
17 done around this timeframe, so I believe that
18 I asked Ellen to ask Carol if they would be
19 willing to share this lease data.

20 They don't always share their lease
21 data because of whatever relationship they
22 have with the operators, et cetera.
23 Typically, we, you know, we do everything we
24 can to uncover lease data. That is the
25 largest part of my job as a appraiser is

1 S. Locatelli
2 detective to find data because that is what,
3 you know, how I value things, is I have to
4 value things by looking at what the market's
5 telling me.

6 So we had, prior to this, reached
7 out to numerous appraisal shops, we
8 researched all of our files, we called
9 brokerage companies, we drove the area,
10 looked for signs, so this was in addition to
11 the data that we had uncovered, the
12 conversation I had with Carol, these were
13 potential new deals that had been done and I
14 wanted to see what that data was, as well.

15 Q. And you mentioned in your answer
16 that sometimes McDonald's doesn't like to
17 release its data on its own leases and I
18 think if we look at the email right above
19 that, that comes through.

20 On May 16, 2019 at 3:06, Ms.
21 DeMarco writes to you and Ellen, I need to
22 discuss internally for approval.

23 Do you understand what -- what is
24 your understanding, I should say, of what Ms.
25 DeMarco meant by that?

1 S. Locatell

2 MR. WALSH: Objection to form.

3 A. I believe that, you know, because
4 McDonald's is not sharing their data, it's
5 confidential, it may be confidential by
6 virtue of their agreements with various
7 landlords, it may be confidential by virtue
8 of their agreements with their operators, but
9 they don't share their data.

10 I had asked specifically, so I
11 believe Carol had to go back, as her email
12 says, to discuss internally for approval.

13 Q. In the second paragraph, I guess
14 the last sentence or maybe two, depending
15 upon the punctuation, Ms. DeMarco writes, If
16 there is no other good data, I will advise.

17 Was there no other good data?

18 MR. WALSH: Objection to form.

19 A. No, we had -- as you can see in my
20 report, I have 11 comps and a listing, I had
21 plenty of other good data, but, again, I
22 don't stop, I'm looking for the universe of
23 comps.

24 So any good appraiser will try and
25 unturn all stones to find information that

1 S. Locatell

2 would be useful in determining an appraised
3 value, so there was good data. In fact,
4 these would have been -- these other
5 properties here, with the exception of
6 possibly the Bruckner Boulevard deal, these
7 others were, you know, they're densely
8 developed suburban areas and the only reason
9 they are listed here is because during a
10 conversation that I had with Carol, she had
11 mentioned that these might have been deals
12 that were done recently.

13 So I don't even recall if we
14 actually ended up getting this data. If I
15 had, they would have been required to have
16 been adjusted for the subject's differences
17 or the differences between these comparable
18 properties and the subjects.

19 Q. Ms. DeMarco writes, I thought it
20 would help for 20th Avenue.

21 What is 20th Avenue?

22 A. That is another property that we
23 were appraising for them around this time in
24 Queens, further out in Queens, towards Long
25 Island, so I think that was her reference.

1 S. Locatell

2 She thought these comps would have been -- I
3 think it's her opinion these spaces would
4 have been similar to the property on 20th
5 avenue.

6 Q. During this time, you had at least
7 two active assignments from McDonald's,
8 right?

9 A. That's correct. That's not
10 uncommon, doing a couple of assignments a
11 year for them. They quite often overlap and
12 they take longer than a two to three-week
13 timeframe, as can you see from this
14 assignment.

15 Q. Turning up to the next page, which
16 is No. 2952. You wrote back to Ms. DeMarco,
17 I was thinking for use as backup for 840
18 Atlantic Avenue, language of lease references
19 market lease comps. I want to put in data to
20 show that our land value is near the market
21 lease comps as site is currently zoned.

22 What is the reference to land value
23 in that email mean?

24 MR. WALSH: Objection to form.

25 A. All this means is I'm looking for

1 S. Locatell

2 more comps to come up with the value of the
3 site for the purpose of the rent reset.

4 Q. Wouldn't it be rental value, not
5 land value?

6 A. Yes, I mean, that's what we were
7 coming up with. We were not doing land value
8 because we knew that the lease dictated us to
9 look at the property based on rents for
10 similar uses, given the use restriction in
11 terms of encumbrance of the lease.

12 Q. So land value was an inaccuracy in
13 this email?

14 A. Yes, it should have -- to be more
15 specific, I should have said rental value,
16 but, again, it was an email, we were emailing
17 back and forth over, can you give me these
18 comps. I wouldn't read more into it than
19 that.

20 Q. I appreciate that you wouldn't read
21 more into it.

22 A. I'm telling you the intent under
23 which the email was written, so you should
24 not read more into it. The email was written
25 looking for comparable data, lease data to

1 S. Locatell

2 use in valuing the subject property for the
3 rent resale purpose, that's what this is
4 about, so the specific word I should have
5 used was rental value, but, again, I'm -- I
6 send hundreds of emails a day and I was
7 trying to get Carol to find out if she could
8 give me this comparable information to
9 include in my report, which I, numerous
10 times, told you what the purpose of the
11 report was for and the lease language itself
12 describes that were required to determine the
13 fair market value subject to the lease.

14 So it was a rental value. Those
15 comps that we were looking for were rental
16 comps.

17 Q. You then get an email back from Ms.
18 DeMarco, who I imagine understood what you
19 meant. There is no indication in this
20 document that she didn't. She writes,
21 Wouldn't you need Brooklyn deals then? And
22 you wrote back, Yes, or similar high-density
23 demographic areas. Then you write, I think
24 Ellen thought these deals were recent deals
25 that you had in the boroughs.

1 S. Locatell

2 What is meant by high-density
3 demographic areas?

4 MR. WALSH: Objection to form.

5 Q. What did you mean when you wrote,
6 high-density demographic areas?

7 A. Well, I wasn't looking for a
8 McDonald's lease that had been done in
9 Suffolk County, you know, where 2,000 cars a
10 day go by the site.

11 I was looking for deals that were
12 more similar in terms of population density
13 and car traffic density, because the subject
14 site has certain parameters, so I wouldn't
15 have said, give me deals out in, you know,
16 Bergen County, New Jersey or Connecticut.

17 I was looking for comparables that
18 were in urban locations similar to the
19 subject.

20 Q. That's because when you select
21 comparables, they have to, in fact, be
22 similar to the subject, right?

23 A. They -- when you select
24 comparables, you are selecting comparables
25 that are the best available data and then you

1 S. Locatell

2 are making adjustments for their differences
3 relative to the subject property.

4 So, yes, that's why all of my
5 comparables are located within densely
6 developed, high-traffic areas that are
7 generally comparable to the subject property
8 and when they are not comparable relative to
9 those, specifics adjustments are made to them
10 to bring them in line with comparability of a
11 subject.

12 If I had only had comparables
13 located in less dense areas, you could adjust
14 them to the subject, but I was fortunate
15 enough to uncover a pretty wide variety of
16 comps that were located within New York City.

17 Q. So some comps are better than
18 others, is what I think you are saying,
19 right?

20 A. Correct.

21 Q. What factors do you consider in
22 evaluating whether a comp is a good comp?

23 A. Date of value is the first factor.
24 Again, I keep saying this, but I would not
25 use comps from 70 years ago. I would use

1 S. Locatell
2 comps that were executed within a reasonable
3 timeframe relative to changed market
4 conditions.

5 So all of the comparables that I
6 included in my analysis, I believe were
7 signed subsequent to sometime in 2014.
8 That's a fairly wide range.

9 I was -- the retail market
10 conditions were analyzed and understood by us
11 and so we were able to make adjustments for
12 those comparables that were signed earlier,
13 like in 2014, 2015, when the market for
14 retail was still increasing. It then sort of
15 flattened out and has not been great. I'm
16 talking about pre-Covid, I'm not talking
17 about the effects of Covid. I'm talking
18 about the effects of the retail market duty,
19 cost commerce, et cetera, that we have been
20 seeing in the market since late 2015, early
21 2016, so date of value, No. 1.

22 No. 2 is use, property use, so we
23 look at the subject property and
24 understanding, again, going back to the
25 gateway issue here, which is you control the

1 S. Locatell

2 site for five years to 20 years at best.

3 What could you do with it in that timeframe,
4 right, how can you profitably develop the
5 site and realize a return over that timeframe
6 for which you have control of the asset.

7 So that led us to understand that
8 you are not going to develop a high-rise
9 residential building, not that you could even
10 do it based on the zoning that's in place
11 now, but you would develop something that the
12 market would recognize over a 20-year term.

13 We then look at locational
14 differences, so we are on a very high traffic
15 corridor, commercial corridor. It's not a
16 City-recognized retail corridor. It is not a
17 corridor that is covered by any real estate
18 office or research firm that sets forth
19 retail rents for the various corridors. They
20 do not cover this area of Atlantic Avenue or
21 Atlantic Avenue, I don't think, in general,
22 even the stronger areas that have pedestrian
23 retail traffic, more towards Brooklyn Heights
24 and Boerum Hill, on the other side of
25 Barclays Center.

1 S. Locatell

2 So we look for comparables that
3 have the same sort of metrics of demographics
4 and traffic counts as the subject site. We
5 look for size and then we look for lease
6 comparables and, you know, as you can see,
7 there is an active market for sites that
8 range in the area of 10 to 30,000 square feet
9 that are developed for retail uses, retails
10 or drivethrough uses when you are located on
11 a corner corridor that is highly influenced
12 by the traffic pattern such as the subject
13 property.

14 So those were the parameters under
15 which we looked. We looked for all sorts of
16 retail lease comps. We did not eliminate --
17 limit it to just looking at QSR, which stands
18 for quick service restaurants or banks or
19 drug stores. We looked for everything and
20 the universe of comps that we uncovered is
21 presented in our report.

22 Q. Zoning, is how the property zoned
23 something that you take into account when
24 figuring out is a comp is a good comp?

25 A. Yes, zoning is considered. For the

1 S. Locatell
2 type of use we are talking about, it can be
3 done under a M1-1 zoning classification or
4 other manufacturing classifications. It
5 could be developed under that classification
6 of various C zones, commercial zones. Also
7 residential zones would allow for this type
8 of development.

9 So for the subject property, in
10 particular, the zoning, while something of
11 note is not as important, because what is
12 most important here, you have to remember, is
13 the term for which you control the sites.

14 Q. You said that's five years, right,
15 low as five, high as 20?

16 MR. WALSH: Objection to form.

17 A. It's a minimum. We are doing a
18 five-year renewal option here, so you control
19 it for five years, you have a 20-year total
20 control period because there are increases
21 that are allowed for the next 15 years, so
22 it's a 20 year.

23 The way I analyzed it was assuming
24 you had control of the site for 20 years,
25 what I was pointing out was that the lease

1 S. Locatell
2 term itself was really just five years, but
3 it's a 20-year controlled term, is the
4 assumption that we made in our analysis.

5 MR. KOH: Let's bring up the next
6 document, which is not Bates stamped,
7 it's No. 11 on my list -- it's not
8 marked as an exhibit yet. Document
9 bearing Bates stamped MCD 003543 to 44
10 and it is an email exchange between Ms.
11 Locatell and Mr. Tener.

12 (Exhibit HH, documents bearing
13 Bates stamp No. MCD 003543 and MCD
14 003544, marked for identification.)

15 Q. Do you recognize what we have
16 marked as Exhibit HH?

17 A. Yes, this looks like a continuation
18 of the emails that you showed me previously
19 on May 6th.

20 Q. And you reminded, in the 11:45
21 email, that we have until May 20th, but I
22 have to leave for FL, I assume that's
23 Florida, on the 15th, so we should do it this
24 week or early next week.

25 This was an effort to schedule the

1 S. Locatell

2 telephonic meeting to select the third
3 appraiser, right?

4 MR. WALSH: Objection to form.

5 A. That's correct.

6 Q. Mr. Tener writes to you, I'm sorry
7 to be a pain, but my side is not happy with
8 the delay between us.

9 Did you ever discuss with Mr. Tener
10 why his side wasn't happy with the delay
11 between us?

12 A. Not that I recall. We had -- I
13 believe we had until the 20th to select the
14 neutral and as you can see in the email
15 below, I had -- this is what I'm remembering
16 now. I had a mediation that was going on and
17 then I had another reset, so, and then I was
18 leaving for Florida, I was extremely busy
19 during this period.

20 And also remember, this is not a
21 delay, there is no delay. This was May 6th.
22 Tom and I had been talking, I believe, on --
23 it was the 25th of April or something, so
24 this would not be considered a delay.

25 It may have been -- his clients,

1 S. Locatell
2 the landlord, may have been anxious, but this
3 was not a delay by any stretch of the
4 imagination, that, typically, when you are
5 involved in these processes, to have this
6 done within a few weeks is not unusual. It's
7 more typical than not. It usually takes you
8 a few weeks to get to the neutral.

9 Again, I needed to discuss the
10 neutral with the client and I was working on
11 a reset and mediation, so I was probably
12 effectively, like, in shutdown mode, where I
13 couldn't have phone calls during the day
14 because when I am in a mediation, I get there
15 at 8:00, I leave at 6:00, and then I'm back
16 working until that evening, so I don't get to
17 my emails until after business and I can't
18 schedule calls with clients because I'm
19 prepping for the mediation for the next day,
20 so...

21 Q. I'm certainly sympathetic to those
22 difficulties. I have heard some lawyers have
23 to deal with that, too.

24 A. Really?

25 Q. Is it fair to say the general

1 S. Locatell

2 expectation in the industry is that the
3 appraisers will cooperate with each other
4 over these scheduling issues?

5 A. Yes, and that's what we were doing,
6 Tom and I never had a problem, we were
7 cooperating the entire time over this issue.

8 I mean, we obviously disagree
9 because of his incorrect analysis, but no one
10 was being cooperative as it related to
11 selecting a third appraiser. I was just so
12 busy that I couldn't do it in a week.

13 MR. KOH: Let's make sure -- I'm
14 going to go to No. 13. I will skip No.
15 12 for the time being and go to No. 13,
16 which is a May 9, 2019 email from Ms.
17 Locatell to Ms. DeMarco to Mr. Meyer.
18 It's Bates stamped MCD 003349.

19 (Exhibit II, document bearing Bates
20 stamp No. MCD 003349, marked for
21 identification.)

22 Q. Do you recognize Exhibit II, Ms.
23 Locatell?

24 A. I do.

25 Q. So it's correct that on May 11th,

1 S. Locatelli

2 you and Mr. Tener agreed to select Marc
3 Nakleh as the third appraiser?

4 MR. WALSH: Objection to form.

5 Q. Did you, on May 11th, agree to
6 select Marc Nakleh as the third appraiser?

7 A. No, the email was sent on Thursday,
8 May 9th.

9 Q. Excuse me, May 9th, I misspoke.

10 A. Yes, a full three days later from
11 the last batch of emails, we selected our
12 neutral appraiser, Marc Nakleh.

13 Q. That's nine days before the May
14 20th deadline, I'm sorry, 11 days?

15 A. Yes, well in advance of the
16 deadline.

17 Q. I apologize for my botching the
18 arithmetic.

19 A. If you can wait, there is a fire
20 engine.

21 Q. Maybe that's what scrambled my
22 neuron a little bit.

23 But you also write, We did not
24 reach out to Marc yet, as we have a
25 disagreement over the language in the lease

1 S. Locatell

2 as it relates to process.

3 What was that disagreement?

4 A. Well, it says here, he read the
5 lease to say we all had to come to the
6 initial meeting with a letter opinion of
7 value, we will negotiate, but if we can't
8 agree or get two of the three to agree, we
9 will average the three values. That was not
10 my understanding of the procedure we were to
11 follow per the term of the rent option.

12 Q. What was your understanding of the
13 procedure?

14 A. Well, if you go to the rent option
15 agreement, I think it's your document 4.

16 Q. It is Exhibit D.

17 A. Okay. If you go to page 1 of that
18 Exhibit D, the last paragraph midway through
19 the paragraph, a sentence that starts, The
20 three appraisers so appointed shall then,
21 within 20 days of the date of the third
22 appraiser is appointed, the date the third
23 appraiser is appointed, estimate by means of
24 a letter opinion of value, the FMV.

25 What this is directing us to do is

1 S. Locatell

2 for the three appraisers to meet and try to
3 come to an agreement as to the FMV.

4 So Tom and I had a disagreement as
5 to what this language was telling us to do
6 and once we selected the neutral appraiser.

7 Q. The last sentence of the paragraph
8 above that reads, Each appraiser's estimate
9 is to be made by a letter opinion of value.

10 What does that direct you to do?

11 MR. WALSH: Objection to form.

12 A. I'm sorry, can you point me to what
13 sentence you were reading?

14 Q. Paragraph immediately above. It's
15 the second paragraph from the bottom, the
16 last sentence.

17 A. Right. But that is telling you
18 that if you can't agree, the three of you,
19 then each of you do your letter opinion of
20 value, so each appraiser's estimate is made
21 by a letter of opinion of value, but then
22 when you read the next paragraph, it's
23 telling you that, it tells you how to appoint
24 the third appraiser and if the two appraisers
25 disagree by more than 15 percent and then

1 S. Locatell

2 once all three appraisers are appointed, you
3 have 20 days in which to meet and determine
4 the FMV, so if you can't, then each letter of
5 opinion of value, so there is no -- to pick
6 sentences here, you have to read this
7 document in its totality and I think that's a
8 problem that we are both falling into, is
9 that in my initial December 18th report, I
10 only had A and B listed, Ellen had only wrote
11 A and B and not the entirety of the option
12 addendum.

13 Once you read the entirety of the
14 option addendum, it's telling you the process
15 to follow and, very clearly, here, it's
16 telling us that if the two appraisers cannot
17 agree within 15 percent, you will appoint a
18 third. The three appraisers then meet and
19 try to agree to FMV and then if you don't,
20 it's the three letters of opinions that are
21 averaged that determine the rent.

22 So there was steps. Tom was trying
23 to jump right to the final step. Tom was
24 assuming that the three of us would not come
25 to some sort of an agreement, he was assuming

1 S. Locatell

2 that -- he was eliminating that step of the
3 process, so because of that, that is why I
4 wrote that email, both of us, because we
5 disagreed agreed that we should go back to
6 counsel and have them, you know, deal with
7 it, so... but, to me, the clear language is
8 that the three appraisers shall appoint and
9 have 20 days to agree.

10 And let me add this one thing. I
11 should also tell you that I do a lot of these
12 types of assignments and the lease always
13 controls, but in addition to the lease, it is
14 also standard practice for the three
15 appraisers to try and to agree.

16 So not only does it dictate here,
17 but that is also a standard methodology that
18 is followed by the appraisers when they are
19 undertaking these appraisal proceedings.

20 Q. You used the word, meet, several
21 times.

22 A. Uh-huh.

23 Q. I don't see that. Maybe I'm
24 missing it, but can you point out to me where
25 it appears in this?

1 S. Locatell

2 A. When I read this to you, I believe,
3 and it doesn't say the word, meet. It
4 says -- I will read it again so you remember.
5 The three appraisers so appointed shall then,
6 within 20 days of the date the third
7 appraiser is appointed, estimate by means of;
8 A, of a letter opinion of value, the FMV.

9 So it is telling us that the three
10 of us should meet. This is the reading here,
11 the three app -- I'm using the word meet
12 incorrectly. You are assuming that means
13 physically meet or Zoom meet.

14 The three appraisers should try and
15 come to an agreement as to the performance,
16 whether it's meet or whatever, the three
17 appraisers should try to estimate the FMV, an
18 FMV, one letter of value.

19 He is skipping a step, Tom was
20 advocating to skip a step in the rent option
21 agreement document.

22 Q. In any event, you describe this as
23 a disagreement between you and Tom, correct?

24 A. Correct.

25 Q. And, ultimately, you said that, and

1 S. Locatell

2 I can find the exact words if you want to.

3 This was something that you were going to let
4 the lawyers deal with?

5 A. We were -- yes, we were going to
6 let the lawyers give their opinion on the
7 process, yes.

8 MR. KOH: Let's bring up what I
9 have marked as No. 14, Nat, which is an
10 email which is actually dated May 20th
11 from Mr. Tener to Marc Nakleh, which is
12 copied to you.

13 Please mark this as Exhibit JJ.

14 (Exhibit JJ, email dated May 20th
15 from Mr. Tener to Marc Nakleh copied to
16 Sharon Locatell, marked for
17 identification.)

18 Q. Do you recognize this email, Ms.
19 Locatell?

20 A. I recognize this, yes.

21 Q. Is this basically the first
22 communication that you and Mr. Tener had with
23 Marc Nakleh concerning this assignment?

24 MR. WALSH: Objection to form.

25 A. To my recollection, yes.

1 S. Locatelli

2 Q. Do you recall having an initial
3 telephone call around 10:00 a.m. on May 21st
4 to go over the details and discuss conflicts?

5 A. And I remember having a telephone
6 call, I can't tell if you it ended up
7 happening at 10:00 or some other time.

8 Q. What do you remember happening
9 during the call?

10 A. I remember, and I know what I
11 typically discuss, so whether it's exact
12 memory or a recollection based on how these
13 processes proceed, I'm sure we told Marc the
14 property address and asked him -- we told him
15 who the clients are, both on the tenant's
16 side and the landlord side, and I'm sure we
17 advised him as to counsel, what the timeframe
18 was and the first thing we would have asked
19 him would have been to clear conflicts, to
20 make sure he didn't do a lot of work for
21 McDonald's or he didn't do a lot of work for
22 the landlord, et cetera.

23 Obviously, Tom and I selected him
24 because we felt confident that he had the
25 experience to opine on rental values within

1 S. Locatell

2 the subject market area, so our conversation
3 to him, the initial conversation would have
4 been primarily based on finding out if he had
5 a conflict and describing the asset and
6 rental value that we were looking for.

7 Q. Do you remember how Marc responded
8 when you had this telephone call?

9 A. I remembered he was thankful we had
10 confidence, that both Tom and I had
11 confidence in his abilities and I think he
12 thought that he was okay on conflicts, he
13 needed to check, obviously. He is with
14 Cushman & Wakefield, which, as you know, is a
15 large national firm and they are quite active
16 in New York City, so I don't recall if he had
17 any hesitation as to having conflicts with
18 either the landlord or the tenant, but that's
19 my recollection of our first conversation. I
20 don't recall it in any great detail, given it
21 was over two years ago.

22 MR. KOH: Let's then bring up No.

23 15. That is a document that bears Bates
24 No. MCD 002674 to 75 and mark that as
25 the next exhibit, which is KK.

1 S. Locatell

2 (Exhibit KK, documents bearing

3 Bates stamp No. MCD 002674 and MCD

4 002675, marked for identification.)

5 Q. Do you recognize Exhibit KK?

6 A. I see it's an email that Mr. Meyer

7 sent to myself regarding Mr. Nakleh's

8 retention.

9 Q. He was asking you for comments,
10 correct?

11 A. That's correct.

12 Q. Did you find anything unusual about
13 the fact that Mr. Meyer was asking you to
14 comment on this retention letter?

15 A. No, that's quite common for the
16 attorneys to ask if he is describing what we
17 are asking of the neutral in specificity, if
18 the right language is included, this is quite
19 common for me to comment on retainers for the
20 neutral and it's common for both sides, the
21 retainer typically goes back and forth, and
22 the party-appointed, either arbitrators or
23 appraisers, will look at it and comment and
24 the attorneys will and the owner and tenants
25 will, so that is very common.

1 S. Locatelli

2 Q. Do you recall if you, in fact, made
3 any comments?

4 A. I do not recall.

5 MR. KOH: Let's, Nat, bring up what
6 I had marked as Exhibit 35. It was
7 previously marked as Exhibit V, as in
8 Victor.

9 Q. Do you recognize Exhibit V, which
10 was previous 35 on your screen?

11 A. Yes, it appears to be an email that
12 I -- in response to Mr. Meyer asking if I had
13 any comments on the Nakleh retainer letter.

14 Q. In fact, you had two?

15 A. I think I had three.

16 Q. Right, okay. So you had three.
17 The first comment was, Take out the reference
18 to the Prospect Heights neighborhood.

19 Why was that?

20 A. I would have to look at the
21 retainer letter to be able to answer these
22 questions, so if you could pull that up, I'm
23 happy to look at it and try to answer them.

24 Q. I think the draft was the second
25 page of what was marked as KK.

1 S. Locatell

2 A. Do you know the document number?

3 Q. Fifteen.

4 A. Fourteen?

5 Q. Fifteen.

6 MR. WALSH: I believe it was 14 --

7 Q. Fourteen, I'm sorry, KK.

8 A. Sorry, I missed the second page.

9 Q. I described it badly. It's clearly
10 my problem, not yours.

11 A. Your question again?

12 Q. My question is, why did you
13 recommend to Mr. Meyer to take out the
14 reference to the Prospect Heights area?

15 A. The subject property is really
16 located on the border of Prospect Heights and
17 Crown Heights and it's unusual to put the
18 specific neighborhood within a retention
19 letter, so I was suggesting that it be
20 struck, it's not necessary.

21 Q. Prospect Heights, how would you
22 describe that neighborhood as of the first
23 half of 2019?

24 A. So Prospect Heights is -- as you
25 know, in New York City, neighborhood names

1 S. Locatelli

2 get invented, changed, expanded by brokers
3 and it's all in an effort to make
4 neighborhoods seem very desirable and part of
5 a more gentrified neighborhood as opposed to
6 a neighborhood that might be more gritty.

7 Calling the subject property
8 Prospect Heights, it's now sort of accepted
9 as being part of Prospect Heights, but it's
10 not the original part of Prospect Heights.
11 Prospect Heights initially was the area where
12 and even the part of where the Barclays
13 Center was not really Prospect Heights, that
14 was Flatbush. Flatbush sort of divides it
15 between Part Slope and Prospect Heights.
16 Prospect Heights is a mixed residential area
17 that has retail sources on the ground floor.

18 It largely was improved prior to
19 the massive rezoning that Forest City Ratner
20 undertook 20 years ago or so was a brownstone
21 neighborhood and, you know, there was a very
22 contentious sort of major rezoning, part
23 state, part city, and they expanded -- that
24 rezoning has led to an expansion of sort of
25 the definition of Prospect Heights.

1 S. Locatell

2 Some people still refer to the area
3 west of the subject up to Atlantic and
4 Flatbush as Pacific Park and immediately to
5 the east of the subject is Crown Heights, so
6 the subject property is the rezoning that
7 they're talking about for the subject
8 properties area directly to the west is Crown
9 Heights.

10 So I would define Prospect Heights
11 as a gentrifying sort of brownstone
12 neighborhood, the boundary of which was
13 really Atlantic Avenue, because Atlantic
14 Avenue was not a brownstone gentrifying
15 neighborhood.

16 So, anyway, the reason I suggested
17 the neighborhood be taken out, because the
18 subject is sort of located at this crossroads
19 and also not typical to include a
20 neighborhood identification in a retainer
21 letter.

22 Q. So calling it -- saying it's within
23 the Prospect Heights area, is it fair to say
24 you feared that might give the property a
25 cache that it really wasn't worth having?

1 S. Locatelli

2 MR. WALSH: Objection to form.

3 A. I don't fear anything.

4 Q. There is a lot I'm afraid of.

5 A. Not me. I used to be a base
6 jumper.

7 As I said, it is unusual to define
8 a property's neighborhood in a retainer
9 letter and the property is not firmly located
10 in one neighborhood or another, so I
11 suggested they take it out and that was my
12 reasoning, those two points were my
13 reasoning.

14 Q. Then you write, Also, I thought you
15 were going to add language highlighting the
16 fact that the renewal option calls for
17 consideration of comparable leases to
18 determine the fair market rental value.

19 Why did you make that suggestion?

20 A. Because that's what the ground
21 lease says. It's very clear. That
22 suggestion is so that -- again, apparently
23 Mr. Tener was confused with what the ground
24 lease said.

25 So I think it's very important to

1 S. Locatell

2 point the language to the lease, which is
3 very specific and it tells the appraiser what
4 to do. If there are comparable leases for
5 rental properties like the subject, that is
6 the approach to be used.

7 You use the residual only and when
8 you can't find comparable leases so, there is
9 nothing wrong with highlighting something
10 that's specific to the rent renewal option.
11 It actually helps the neutral appraiser and
12 most -- I've acted as a neutral many, many
13 times. Typically, what I will do when I'm
14 trying to understand and put together a
15 retainer, I will talk to both parties and see
16 what does the language of the lease
17 specifically say.

18 So this was just in order to make
19 the assignment very clear and to reference
20 the actual rent option addendum, which is
21 what is directing, both myself, Tom and the
22 neutral, to do in determining the valuation
23 applicable to the subject property.

24 Q. Did you tell us earlier any
25 competent appraiser would be able to read the

1 S. Locatell

2 lease of the rent option and figure out what
3 -- didn't you tell us earlier, Ms. Locatell,
4 that any competent neutral appraiser could
5 simply read the lease and figure out what was
6 required?

7 MR. WALSH: Objection to form.

8 A. I believe what I told you is that
9 any competent appraiser could --
10 understanding -- there are two things. Yes,
11 any competent appraiser who does these
12 proceedings and understands how to read
13 ground lease rent reset provisions would know
14 that the lease does not explicitly say to
15 give consideration of determining value
16 without the lease in place, right.

17 So there is a certain level of
18 competency you need to do this job and any
19 competent appraiser who was aware of how you
20 read these leases would know how to do that.

21 What I think I was referring to was
22 would any competent appraiser understand, if
23 you only controlled this property for 20
24 years, that that value would not be the same
25 if you controlled it for a hundred years.

1 S. Locatell

2 That's what my reference to any competent
3 appraiser was.

4 Q. You believe that Mr. Nakleh was
5 competent to serve as the neutral here,
6 right?

7 A. I did. It is completely within the
8 realm of typical practice for the retainer
9 agreement to specifically reference. This is
10 an unusual -- the two paragraphs here that
11 Mr. Meyer wrote is an unusual presentation of
12 a retainer for a neutral. Typically, they
13 will include all of the language in the
14 option for the part of the lease that relates
15 to the rental determination that the neutral
16 is being hired for.

17 Most often, it will reference the
18 entirety of that section and Mr. Meyer
19 suggested couple of paragraphs did not do
20 that, so that's why I was saying to him that
21 you should put in and highlight what we were
22 actually supposed to be doing and this is
23 something that is done in all of these
24 proceedings. It is very typical for, again,
25 both the party-appointed appraisers, as well

1 S. Locatelli
2 as counsel and client to look at this
3 retainer agreement and also for the neutral
4 to have the parties explain to them exactly
5 what they'll be doing, what their role is,
6 show me the language, I want to know the
7 entirety of the option agreement so I know my
8 function is.

9 Q. But it was your position that Mr.
10 Tener had not considered comparable leases to
11 determine the fair market value, right?

12 MR. WALSH: Objection to form.

13 Q. Wasn't that your contention?

14 A. It's not a contention. It's a
15 fact.

16 Q. And you wanted to make sure that
17 the Mr. Nakleh understood that, in your view,
18 the lease required consideration of
19 comparables, right?

20 MR. WALSH: Objection to form.

21 A. Again, you are asking questions
22 that seem to me that you believe I was acting
23 as an advocate. I was not acting as an
24 advocate here. I was trying to make Mr.
25 Nakleh's job easier, which was to understand

1 S. Locatell

2 what he was supposed to do as a neutral.

3 The full language of the rent
4 option addendum was not included in what Mr.
5 Meyer had sent me, so the -- what I was
6 trying to do was to make it clear what Mr.
7 Nakleh's job was in being hired as the third
8 appraiser.

9 Q. Therefore, you also wanted to
10 highlight it was a five-year renewal term to
11 help make it clear to Mr. Nakleh?

12 MR. WALSH: Objection to form.

13 A. Of course.

14 Q. Because you were concerned Mr.
15 Nakleh would not be able to read the lease
16 and understand it as you did?

17 MR. WALSH: Objection to form.

18 A. Mr. Koh, again, I selected Mr.
19 Nakleh or I agreed to Mr. Nakleh as a neutral
20 because I believe he is competent to do this
21 job.

22 So I'm not afraid of the lease.
23 The lease is the lease and when you do an
24 appropriate retainer, you should include the
25 full language of the lease.

1 S. Locatelli

2 Q. Now, you also believe that Mr.
3 Tener had different views about the need to
4 reconsider the option -- to consider market
5 comps and the five-year renewal term, right?

6 A. What I knew at that point was that
7 Mr. Tener had incorrectly prepared his
8 analysis. He then changed his mind and
9 agreed that the determination of rental value
10 was subject to the term of the lease, but
11 when he and I first spoke about values, he
12 thought that we were valuing the land,
13 assuming that the tenant was going to own it
14 in perpetuity. He was assuming that it was
15 free, vacant and unencumbered of the lease
16 itself and it does not say that.

17 So Mr. Tener was incorrect, to the
18 benefit of his client, and subsequent to our
19 meeting, he and his client did agree that the
20 language of the lease is such that the rental
21 redetermination should take into account the
22 fact that we are dealing with an encumbered
23 property, so Mr. Tener corrected his mistake
24 and all I'm doing here is saying, you have a
25 neutral appraiser, the typical process in

1 S. Locatell
2 writing one of these retainer agreements,
3 because this is what Mr. Nakleh is going to
4 ask, is, what is the lease language that is
5 guiding my role here?

6 And if you had all of that lease
7 language in there, then I wouldn't have had
8 to say, you know, put in, highlight the fact
9 that you have to consider that the lease
10 tells you that you have to consider rent
11 comparables if they exist.

12 Q. Why didn't you just recommend that
13 you put -- you quote the lease language, why
14 go through all of this discussion of what you
15 think it means?

16 A. I don't think it's all this
17 discussion. I think I wrote three sentences,
18 20 words, it's not a lot of discussion.
19 Maybe I should have said that, as well, but
20 that was the intent of the email. I can tell
21 you that. I can tell you by virtue of my
22 experience, that this is -- the retention
23 letter for the neutral is typically a parsed
24 document, both sides look at it and they want
25 to make sure the language of the lease is in

1 S. Locatell

2 there.

3 And what Mr. Meyer sent me did not
4 reflect for that, so that was why I sent this
5 email. I could have said, just copy the
6 whole rent addendum and put it in the
7 retainer, it would have been the same thing.

8 MR. KOH: Let's bring up the next
9 document, which is No. 16 in my list and
10 it's a May 31, 2019 email from Ms.
11 Locatell to Marc Nakleh and Tom Tener
12 bearing Bates stamp numbered MCD 003463
13 to 66. Please mark this as LL.

14 (Exhibit LL, documents bearing
15 Bates stamp No. MCD 003463 through MCD
16 003466, marked for identification.)

17 Q. Do you have that in front of you,
18 Ms. Locatell?

19 A. I do. I'm looking through it, if
20 you give me a moment.

21 Q. Tell me when you are ready for
22 questions.

23 MR. WALSH: Howard, I'm not
24 suggesting we take a break right at this
25 moment, but we've been going for about

1 S. Locatell
2 an hour and 20 minutes, so I wouldn't
3 mind taking a break after you get
4 through some questions about this
5 document.

6 MR. KOH: I was going to do this
7 document and one other. If you want to
8 take a break before, then that's
9 absolutely fine, but that was going to
10 close out an area, but any time either
11 you, Sharon or Leslie need to take a
12 break, just let me know.

13 MR. WALSH: I have no objection to
14 doing this document.

15 MR. KOH: I am cognizant that we
16 are approaching 90 minutes and that's a
17 long time for anybody.

18 Q. Are you ready, Ms. Locatell?

19 A. I am.

20 Q. First, I would like to focus on the
21 last email here, March 22nd, and that's an
22 email that you sent to Marc Nakleh, right?

23 A. March or May?

24 Q. I'm sorry, May 22nd, excuse me.

25 A. It is, yes.

1 S. Locatell

2 Q. That was for purposes of disclosing
3 conflicts?

4 A. It appears to be, yes.

5 Q. And you write just before the list
6 at the bottom, As per Tom, his client
7 (landlord) consist of the following persons
8 and entities, right?

9 A. Correct.

10 Q. And then there is a list?

11 A. Uh-huh.

12 Q. Did you get that list from Mr.
13 Tener?

14 A. I believe so, yes. I -- actually,
15 I don't remember where I got the list.

16 Q. But that was the list that you sent
17 to Mr. Nakleh for sure, right?

18 A. That's correct, cc'ing Tom. I did
19 not have discussions or contact with Mr.
20 Nakleh.

21 Q. I'm sure you didn't and I didn't
22 mean to imply that you did.

23 Then there is some discussion about
24 scheduling and things like that and at the
25 top email from May 31, 2019 at 10:09 a.m.,

1 S. Locatell

2 you write, Thanks, looks like it will be
3 another beauty.

4 What does that mean?

5 A. Well, at this point, there was
6 already disagreements to even getting to what
7 -- hiring the neutral. It seemed as if the
8 clients were not getting along from Tom and
9 I, our perspective, so that's what it meant.

10 It wasn't going to be -- there are
11 some cases where tenants and landlords will
12 hire you and say, go at it. There are no
13 attorneys involved, I should point out, and
14 they will let the appraisers do their job,
15 come to a conclusion and send final opinion
16 of value.

17 Usually once the attorneys are
18 involved, it turns into these very protracted
19 procedures, such as we have now, that may or
20 may not end up in litigation, so we --

21 Q. It has.

22 A. But that's what I think I was
23 referring to, was that the sides were not
24 agreeing, so sometimes, as a neutral, you
25 just, at the end, you show up to the meeting,

1 S. Locatell

2 you write your report, you do whatever you
3 are directed to do and, other times, you have
4 to be involved during the process to get to
5 that point because the clients disagree over
6 every little thing, so...

7 Q. So this was one of those, would it
8 be fair to say, a hard fought appraisal?

9 MR. WALSH: Objection to form.

10 Q. Would you characterize it as hard
11 fought?

12 A. No, I mean not at that point. All
13 Tom and I had done was -- and I don't even
14 remember if we met in person or had a phone
15 call talking about value. We knew we were
16 not close and then we selected a neutral, so
17 I wouldn't say it was hard fought.

18 I was just saying it seemed like
19 the clients were not getting along and that
20 was an opinion that both Tom and I shared.

21 Q. Would it be fair to say that both
22 of the clients, McDonald's and Vanderbilt,
23 were very entrenched in their positions?

24 MR. WALSH: Objection to form.

25 Q. Would that be fair to say?

1 S. Locatelli

2 A. I can't speak to the landlord's
3 position. All I can tell you is that
4 McDonald's, they didn't have a position. I
5 had a position. They asked me what the value
6 was based on the terms of the lease and I
7 told them, so I don't know if I would call it
8 entrenched. They hire me as an expert and
9 they, I, think feel comfortable with my
10 analysis based on my experience, so I told
11 them what the value of the rent was for this
12 renewal term based on all the market data
13 that we had uncovered. And the value was,
14 you know, in the range of \$350,000 a year.

15 As to the landlord's position, you
16 would have to ask the landlord whether they
17 were entrenched. McDonald's just knew what
18 their hired expert was telling them the value
19 of the property was.

20 MR. KOH: Let's bring up the next
21 document, No. 17, in the list and mark
22 it as MM, Mary, Mary. It's a one-page
23 email bearing Bates stamp MCD 005436.

24 (Exhibit MM, document bearing Bates
25 stamp No. MCD 005436, marked for

1 S. Locatell

2 identification.)

3 A. I have it.

4 Q. Can you tell me what this document
5 is?

6 A. Again, this is an example of the
7 work we do to make sure we have the totality
8 of the lease comps. This was sent to Dan
9 Sciannameo at Albert Valuation Group and we
10 are asking if he has any other -- any lease
11 comps for pad site retail rent.

12 Q. You specifically said pad site,
13 right?

14 A. That's what it says. Looking for
15 any pad site rental retail comps.

16 Q. Then you say, MCD, which I assume
17 is McDonald's; Dunkins, which is Dunkin
18 Donuts; Starbucks; banks. You say all that?

19 A. That's correct.

20 Q. You say, I have a site on Atlantic
21 Avenue in Brooklyn, right?

22 A. That's correct.

23 Q. Why didn't you just give him the
24 address, say, do you have any comparable
25 sites for this address?

1 S. Locatell

2 A. I don't know. No reason.

3 Sometimes -- I don't always include addresses
4 because appraisers, when you are asking for
5 data, they may just on their own limit the
6 market they are looking for.

7 I was looking for all of the data,
8 so if I just say Atlantic Avenue, I will get
9 the stuff to the east, the stuff to the west.
10 You know, to my recollection, I don't know if
11 David had anything. I think I spoke to him
12 subsequent to this and, you know, told him I
13 had a 30,000 square foot site, was looking
14 for retail rent comps, but he's -- we are --
15 and I'm sure that Tommy talks to him a lot,
16 as well. We share data with each other all
17 the time.

18 Q. But you specifically said pad
19 sites. Wouldn't that limit the data he would
20 give you?

21 A. No. He would have considered
22 retail sites on Atlantic Avenue or other
23 retail corridors.

24 I spoke to Dan, so, you know, there
25 is -- I don't specifically recall if I shared

1 S. Locatell

2 the address with him on the phone call.

3 Chances are, I had, because by this point, we

4 had already hired our neutral. Dan

5 Sciannameo would have been one of the

6 appraisers probably on Tom Tener's and my

7 list for a potential neutral at one point, so

8 because he is very active in Brooklyn and

9 knew the area well, he was born and bread in

10 Park Slope, which is not far from here, so

11 Dan is smart and knowledgeable and knows what

12 comps, he would have sent me, had he had

13 them.

14 Q. You told him to get pad sites,

15 right?

16 A. Yes.

17 Q. Not development sites?

18 A. Well, I'm not sure of the

19 distinction you are making.

20 Q. You were the one who made a

21 distinction before?

22 A. You asked me. You made the

23 distinction. You asked me to describe

24 broadly the definitions of those two, but a

25 development site, a pad site is a development

1 S. Locatell
2 site, it's being developed for a retail use
3 where you have control for a limited amount
4 of time, so if I had said to him, Dan, I need
5 comps of development sites near Atlantic
6 Avenue, he would have sent me sales of land
7 that were unencumbered, whereby the owner or
8 tenant had control in effectively perpetuity
9 and that's not what I needed.

10 Remember, here, the term is a
11 defining issue of what we are looking for in
12 terms of value here, so it would have been, I
13 would not have gotten anything relevant had I
14 said, development sites.

15 Q. You didn't say five-year term, you
16 didn't say 20-year term, you said pad sites,
17 right?

18 A. That's what I said.

19 MR. KOH: Okay. I think now is a
20 good time to take a lunch break.

21 (Luncheon recess taken.)

22

23

24

25

1 S. Locatell

2 A F T E R N O O N S E S S I O N

3 (Time noted: 1:47 p.m.)

4 S H A R O N L O C A T E L L, resumed and
5 testified as follows:

6 MR. KOH: Can you please bring up
7 No. 19, which is a June 27, 2019 -- June
8 17, 2019 letter from Ms. Locatell, which
9 was previously marked as Exhibit W.

10 EXAMINATION BY (Cont'd.)

11 MR. KOH:

12 Q. Ms. Locatell, do you recognize
13 Exhibit W? And feel free to look through all
14 nine pages.

15 A. Thank you. I do recognize it, yes.

16 Q. Tell us what it is, please.

17 A. It is the June 17, 2019 letter of
18 value that we prepared in regard to
19 determining the rent for the -- the renewal
20 rent for the renewal period per the terms of
21 the rent option agreement.

22 Q. There is also --

23 MR. KOH: Pull up Exhibit No. 18,
24 Nat, which is a letter dated the same
25 date, which is designated Exhibit X.

1 S. Locatell

2 Q. And, Ms. Locatell, when that's up,
3 it's now document 19, can you tell me what
4 this is?

5 A. This is the same -- excuse me while
6 I have a sip of water.

7 Q. Take your time.

8 A. This is the same report, but in a
9 longer format. It is also setting forth the
10 rental value of the subject site per the term
11 of the rent option addendum.

12 Q. Why did you prepare two separate
13 versions of this report?

14 MR. WALSH: Objection to form.

15 Q. Why are there two separate versions
16 of this report?

17 MR. WALSH: Objection to form.

18 Q. Can you answer that question?

19 A. Yes, the first version is just a
20 short format report that we would have
21 supplied to the client and then the longer
22 version is the format that we would have
23 supplied, it has more detail of our analysis
24 of the adjustments that we made to the
25 comparables that would have been likely

1 S. Locatell

2 supplied as part of the appraisal proceeding
3 process.

4 Q. Now, were these two appraisals the
5 only two appraisals that you prepared for --
6 or opinions of value, I should say, that you
7 prepared for 840 Atlantic Avenue from the
8 period December 12, 2018, which was the date
9 of the last two appraisals or opinions of
10 value we looked at and these?

11 MR. WALSH: Objection to form.

12 A. Yes, yes, to my recollection, these
13 are the only two.

14 Q. Did you --

15 A. I'm sorry, I just want to add on to
16 that answer. Remember, I told you when I
17 give an opinion of value, even verbally, that
18 is an appraisal report, so I had been talking
19 to the client throughout this process, but as
20 to written reports that we exchanged, these
21 were the only other two.

22 Q. Did you, after the preparation of
23 these two June 17th reports, attend a meeting
24 at the offices of Morris Missry?

25 A. I don't recall when that meeting

1 S. Locatelli

2 was.

3 Q. But you recall the meeting?

4 A. I do recall the meeting. I just
5 don't know if it occurred after this report
6 or before this report. I don't recall when
7 it was.

8 Q. Who was at this meeting?

9 A. I believe -- I know Carol DeMarco
10 was there, Mr. -- Mike Meyer was there, I
11 believe, myself, obviously, Tom Tener was
12 there I know, Mr. Missry was there, I believe
13 Mr. Li was there and I believe Mr. Rottenberg
14 was there, but I'm not 100 percent certain.

15 Q. What happened at this meeting?

16 A. We discussed our differences in
17 value and Mr. Tener and Mr. Rottenberg's
18 incorrect reading of the lease. Mr. Missry
19 was quite vocal and a little rude at the
20 meeting, but that's generally what we were
21 talking about. It was a subject property and
22 the rent option agreement and how we came to
23 value.

24 I do remember exchange -- giving
25 Tom my comparables and he spent some time

1 S. Locatell

2 looking at them and discussing them and
3 questioning me on them. That's the extent of
4 really what I remember.

5 Q. Did Mr. Tener or anybody on the
6 Vanderbilt side give you any documents at
7 that meeting?

8 A. I don't believe that either of us
9 left with documents. I think that we were --
10 and I don't actually recall if we exchanged
11 reports, other than I gave my list of
12 appraisal comps during the meeting. I recall
13 giving those to Mr. Tener.

14 I don't remember if, at the
15 meeting, he gave me his actual report or we
16 were just talking about the assumptions he
17 made in his report. I don't recall.

18 MR. KOH: Nat, can you please bring
19 up No. 20, which was previously marked
20 as Exhibit 32. It's a restricted
21 appraisal of Tom Tener.

22 Q. And, Ms. Locatell, I would like you
23 to take a look at Plaintiff's Exhibit 32 and
24 tell me if you recognize it?

25 A. Yes, I recognize this report.

1 S. Locatell

2 Q. What is it?

3 A. It's a restricted appraisal report
4 that Mr. Tener and Sean Kest (phonetic)
5 prepared. It's dated April 15, 2019 and it
6 purports to set forth the fair market value
7 of the demised premises.

8 Q. And do you remember when you first
9 saw this report?

10 A. I think I just testified to that.
11 I'm not sure if I actually saw it at the
12 meeting with Mr. Missry and McDonald's
13 personnel or if it was given to me after that
14 meeting, I don't recall.

15 Q. I want to focus on document 18 and
16 19, which are the two versions of the June
17 17th report that you prepared and I have some
18 questions about the difference between them.

19 In the short one, which is Exhibit
20 W, you did not include a sales (rental)
21 comparison approach, yet, you did in the long
22 version, Exhibit X.

23 Can you tell me why?

24 MR. WALSH: Objection to form.

25 A. So the letter, document 18, Exhibit

1 S. Locatell

2 W, is setting forth our conclusion based on a
3 rental value approach. The only difference
4 is that this letter is a short form and it is
5 basically the conclusion without the extended
6 analysis and individual pages of the
7 comparables that are set forth in this
8 report.

9 So there is no different
10 methodology or work that was undertaken to
11 prepare this report versus the other report.
12 This is just presentation, this is showing a
13 short form presentation of the research and
14 data that was done via the rental comparison
15 approach with our conclusions.

16 The second document, document No.
17 19, which is exhibit -- I don't know what
18 exhibit that is.

19 Q. X.

20 A. -- X shows the detail, so instead
21 of having it in our file, now I've taken it
22 and we put it into the report itself, so
23 there is an adjustment grid and there are
24 individual pages that set forth the details
25 of each lease comparable, but this analysis

1 S. Locatell
2 was done in preparation of the short form
3 report. It's just presented in a short form
4 analysis, not too dissimilar to Mr. Tener's
5 restricted report, whereby he has no backup
6 for any of his assumptions or land sales, so
7 the same work and analysis went into both
8 reports.

9 The shorter report is nothing more
10 than that. It's a shorter presentation of
11 the same valuation analysis.

12 Q. Why make a shorter and longer
13 presentations? That's my very basic
14 question.

15 A. Well, the client didn't require a
16 longer presentation and the longer
17 presentation was if we needed to submit the
18 report at any point during the appraisal
19 proceeding, we wanted to have all the
20 documentation in there, so this is not
21 unusual.

22 The initial short form was for the
23 client to look at and see the comps we were
24 using. The analysis was put into the longer
25 form report so that if the report was

1 S. Locatell

2 submitted to another party, they would have
3 an understanding as to how we derived the
4 number.

5 I had been speaking to McDonald's
6 over months at this point about what my
7 valuation was, so they were not requiring the
8 backup analysis for it. That is the reason
9 for the two different report formats.

10 Q. Were either of these, the short
11 form or the long-term presentation, at any
12 point given to Vanderbilt?

13 MR. WALSH: Objection to form.

14 Q. Any representative of Vanderbilt?

15 MR. WALSH: Same objection.

16 A. I don't recall. Typically, the
17 reports, if they're exchanged, would have
18 been exchanged through counsel in these
19 proceedings. I don't recall. Again, as I
20 said, I don't remember if I saw Tom's report
21 at the meeting with Morris or if we exchanged
22 reports after that meeting.

23 At some point, I came to have a
24 copy of Tom's report, obviously, because I
25 did analysis in looking at his assumptions,

1 S. Locatell

2 his data, et cetera, but I don't recall if I
3 exchanged a report with him directly or if it
4 was done through counsel.

5 Q. Let's focus a little bit on the
6 long form since that contains more
7 information.

8 On pages 4 and 5, and we are
9 looking at Exhibit X which is No. 18, I'm
10 sorry, No. 19, you've got what appear to be
11 eight different comps and something
12 identified as L-1, which -- you have eight
13 different comps and something identified as
14 L-1.

15 What is L-1?

16 A. Listing.

17 Q. So that was a deal that was being
18 negotiated, but not final, right?

19 A. That's not exactly correct. I'm
20 having -- hold on one second while I try to
21 enlarge this. The print is quite small.

22 I don't think it was a deal being
23 negotiated. I think it was a listing and we
24 had had a deal that had been in negotiation
25 at -- they were asking \$312,000 in rent for

1 S. Locatell
2 the site, they had a deal that was close to
3 being done at \$280,000 per annum, but it fell
4 through and so it was still being listed and
5 the broker reported that after that deal fell
6 through, the only offers they had received
7 were between 180,000 and \$220,000, so it was
8 fully still a listing at this point.

9 Yes, and I'm familiar with this
10 site because I've done work for this
11 landlord. I was able to speak to the broker
12 specifically and this is well researched and
13 accurate data that's contained in the note.

14 MR. WALSH: As a quick suggestion,
15 I'm curious, is this among the hardcopy
16 documents?

17 MR. KOH: Yes. If you would like
18 to go to the two large boxes, if you
19 want to pull them out, they are
20 organized by Bates number. If you want
21 to pull them out to review them.

22 MR. WALSH: She said she was having
23 a hard time reading them, that's why I
24 suggested that may be another option.

25 THE WITNESS: Give me a moment. I

1 S. Locatelli

2 will see if I can find it in here.

3 A. I found it.

4 Q. I'm glad you have it in front of
5 you because now, I'm going to turn your
6 attention back to one of the December 12,
7 2018 appraisals. This one with the
8 comparable net leases. You can pull it up on
9 your screen, it is No. 5.

10 And I want you to turn to the
11 fourth of eight pages where you have a table
12 of comparable net leases.

13 A. I'm there.

14 Q. Now, you've got on that table, you
15 have three net comparable net leases, two
16 Burger Kings and a Chipotle.

17 Am I correct that the two Burger
18 Kings appear on the table in what's been
19 marked as Exhibit X, which we are now looking
20 at in hardcopy, but the Chipotle, I don't see
21 there and I'm wondering if I'm missing
22 something or if there was a reason that
23 Chipotle fell off the list of appropriate
24 comps?

25 A. 2940 Cropsey Avenue is the address.

1 S. Locatell

2 It is not included on the list.

3 Q. How did that become an
4 inappropriate comp, the one that wasn't
5 included?

6 A. I don't believe it's an
7 inappropriate comp. I don't know why it fell
8 off the list.

9 I do know that they kept the
10 building there, so maybe -- Ellen put this
11 initial list together. That may have been
12 why, but I have no explanation as to why it
13 is not on the list. It should be on the
14 list. I see it as a very good comparable.
15 It rented for 300,000 in a location that is
16 somewhat inferior to our location, so it
17 brackets our value very nicely.

18 I can't explain why it's not on the
19 list. It's probably on oversight.

20 Q. After the page -- and I want to
21 turn your attention back to Exhibit X which
22 is the long version of the June 17th opinion
23 of value.

24 After the table of comparable
25 ground rents retail, you have --

1 S. Locatelli

2 A. Hold on one second. That's not the
3 one I found in hardcopy. What document
4 number is this?

5 Q. I'm looking at what is on your
6 screen and maybe you can do this on the
7 screen, would be No. 19.

8 A. I'm there.

9 Q. And let me get to that, as well,
10 and if you go to the sixth page, you start to
11 see a series of summaries of the subject and
12 then the various comps, right?

13 A. Correct. Those are what we call
14 comp pages.

15 Q. That helps. On these comp pages,
16 there is various information, right?

17 A. There are.

18 I should point out, on these pages,
19 just so you know, if you look at the size of
20 the site, you will see that they say -- I
21 think for the majority of them, a couple of
22 them may be correct, you will see they list
23 the site size as 29,000 square feet, that's
24 the subject site size, not the individual
25 comp site size. These pages are put together

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2 with an Excel spreadsheet, so I think it's
3 referencing the wrong cell, so I would like
4 to point that out as a correction.

5 As to our analysis, we used the
6 correct site size. You will see in the rent
7 chart itself on pages 4 and 5 that the
8 correct site size is being referenced and you
9 can tell by our adjustments that the correct
10 site size was referenced, so that was a typo,
11 I would like you to note.

12 Q. I think I understand that. Let me
13 read your answer and make sure I do.

14 Is there any way to tell from
15 Exhibit X, what the zoning is for each of the
16 comparables that are listed here?

17 A. I believe it's likely a hidden
18 column. When you put these Excel worksheets
19 in a report, we start out a large number of
20 columns, but to make it legible, as you can
21 see, it's difficult to read with the number
22 of columns we have in place, we typically
23 will show the columns that are most
24 important.

25 And, again, as I mentioned earlier,

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2 given that the control of this site is
3 determined by the term of the lease,
4 underlying zoning is less important here
5 because for all of these subject spaces,
6 whether it's manufacturing zoning, commercial
7 zoning or residential zoning, they are
8 allowed to do these commercial uses, which we
9 determined to be the use -- the highest and
10 best use for the subject property, given its
11 term restriction.

12 So I don't see the zoning listed on
13 the chart and it is not included in the
14 individual pages. It likely is in a column
15 that's been hidden in order to fit the data
16 on to the page so that it's legible.

17 Q. After you exchanged -- after this
18 -- you met at Morris Missry's office in June,
19 did you have individual discussions with
20 people at McDonald's concerning what happened
21 at the meeting?

22 A. I don't recall. I'm sure Mr. Meyer
23 and I probably talked about the meeting
24 after. It was quite a memorable meeting, so
25 I'm sure we had some conversations afterwards

1 S. Locatell

2 regarding it, but in terms of other people at
3 McDonald's, I don't remember.

4 Q. Well, since it was a memorable
5 meeting, why don't you tell me everything you
6 can remember about the meeting?

7 A. I think I told you. I told you
8 that we -- you asked me this initially and I
9 said I recollected who was there, I told you
10 what I thought we did, we discussed the
11 valuations where both of us were coming from,
12 we discussed how Tom was incorrect in his
13 analysis, Mr. Missry got very angry and was
14 quite rude and we sat back down and discussed
15 further and Tom asked to see my comps, the
16 rental comps and I showed him my grid.

17 I don't recall if we -- I am
18 thinking that he didn't exchange reports
19 because I know I didn't give him my report in
20 its entirety, just the comps itself, so, you
21 know, we basically talked about why the value
22 is the value and that you need to consider
23 the term issue, which they ultimately agreed
24 to, so that's basically my recollection of
25 the meeting as I sit here now and can recall.

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2 MR. KOH: I would like you to bring
3 up, Nat, document No. 21 on my list.

4 It's a June 19th email from Ms. Locatell
5 to Ms. DeMarco and Mr. Meyer.

6 Q. Can you tell me what this email is?

7 MR. KOH: Please mark this as
8 Exhibit NN. It bears Bates No. MCD
9 004011.

10 (Exhibit NN, document bearing Bates
11 stamp No. MCD 004011, marked for
12 identification.)

13 A. Yes, I recognize this.

14 Q. What is this?

15 A. It's an email that I sent to Carol
16 cc'ing Ms. Benjamin from my office asking for
17 answers on possible residual analysis
18 questions, given that landlord and landlord's
19 appraiser had incorrectly assumed there were
20 no rental comps to use for their analysis,
21 they did a residual analysis.

22 And, again, this goes back to me
23 trying to provide McDonald's with research
24 regarding a review of what KTR had done. KTR
25 is saying there are no comps, I can't find a

1 S. Locatell
2 comp anywhere, even though Sharon gave me 11
3 of them, I can't find any comps, so I have to
4 do a residual analysis. They did a residual
5 analysis and I'm trying to help McDonald's
6 understand that if you were going to do a
7 residual analysis, it should be done
8 correctly.

9 So these were some of the issues I
10 thought that needed to be addressed in
11 potentially doing a residual to show Mr.
12 Tener that absent the fact that there were
13 numerous comparable leases to use, which is
14 what the rent option directs us to do, if you
15 did a residual analysis, you need to do it
16 correctly, so that's what this email was
17 regarding.

18 Q. First of all, did you write this
19 email before or after the memorable meeting
20 at Morris Missry's office?

21 A. I don't remember the day. I think
22 I told you, I didn't remember the day of the
23 meeting.

24 Q. I thought this might help, but
25 apparently it doesn't.

1 S. Locatell

2 You used the term, residual
3 analysis. Can you please explain to us what
4 a residual analysis is?

5 A. Yes. Well, as you may know, there
6 are three methods to valuation. There is the
7 market data approach, commonly known as the
8 sales comparison approach, there is the cost
9 approach, whereby that's an additive
10 approach, you determine the value of a site
11 and then you add the cost to build those
12 improvements and that is your value, and the
13 third approach is the income capitalization
14 approach and you utilize that approach to
15 determine land value, it's called a land
16 residual or the model in our market that is
17 most utilized is called the land residual
18 model.

19 Q. So the information you requested
20 here was for purposes of helping you develop
21 a better understanding of Mr. Tener's land
22 residual analysis, is that why you were
23 requesting this information?

24 A. No, I understood Mr. Tener's
25 residual analysis. I understood that it made

1 S. Locatell

2 sort of very wildly inaccurate assumptions.

3 What I was trying to do here was if
4 you could not find rent comparables and you
5 had to do a residual analysis per the rent
6 option agreement, how would you do it
7 appropriately, and so that's what this email
8 was in regard to. It had nothing to do with
9 Mr. Tener's analysis. I knew on the face of,
10 after talking to Mr. Tener and what his
11 assumptions were that his residual land
12 analysis was not credible, so this was --
13 these were the issues that I saw in what
14 would be necessary to understand in preparing
15 a more credible residual analysis.

16 Q. Did you ever get the answers to the
17 questions you lay out in this email which
18 we've marked as NN?

19 A. So as we discussed earlier, I don't
20 believe that a land use attorney was ever
21 retained.

22 That being said, I'm quite familiar
23 with the zoning regulations of New York City.
24 We review and analyze zoning for most
25 properties, so I know that we did some of our

1 S. Locatell
2 own research here, but as to getting
3 information from McDonald's that specifically
4 dealt with these questions, I don't believe
5 that we did.

6 Q. Did you ever do a land residual
7 analysis of the subject property at 840
8 Atlantic Avenue?

9 A. Again, I actually don't recall. I
10 don't think I ever did anything in a formal
11 report for them. I might have done -- quite
12 often, I will have an Excel open and I do
13 back of the envelope analyses. I don't even
14 save it sometimes. I might have done
15 something along those lines, but I don't
16 think I did anything in an official report or
17 document that I remember.

18 It wasn't too long after this, I
19 believe, that we were sort of told to stop
20 working on the assignment. I think that -- I
21 don't know if it was that you guys had
22 entered litigation at that point or what. I
23 just stopped hearing from the client.

24 I'm so busy that if the client is
25 not contacting me, I'm not usually reaching

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2 out saying, how can I help you, I wait for
3 them to call me.

4 So I believe that, you know, it
5 wasn't too long after this that things sort
6 of came to a halt, so I don't recall
7 specifics much after this date.

8 MR. KOH: Let's take a look at the
9 next document which I would like to
10 bring up, which, Nat, I marked as No.
11 22 in my stack. It should be marked as
12 the next exhibit, which would be 00. It
13 bears Bates stamp No. MCD 005733.

14 (Exhibit 00, document bearing Bates
15 stamp No. MCD 005733, marked for
16 identification.)

17 Q. Do you recognize this email?

18 A. I do.

19 Q. What is this?

20 A. It's an email I wrote to Carol and
21 Mr. Meyer and cc'd Ellen Benjamin from my
22 office asking, again, if they had any
23 information for 10 to 15,000 square foot
24 retail uses with parking.

25 This goes back to searching for

1 S. Locatell

2 data. We had done this initially, as I told
3 you, we looked for the gamut of retail ground
4 leases for larger spaces, smaller spaces and
5 didn't find any, so this was going back to
6 that idea of because Tom was proposing this
7 over 20,000 square foot retail taxpayer
8 effectively, I was, again, reaching out to
9 see is there any data out there supportive of
10 this.

11 Q. You used the term, taxpayer.

12 What does that mean? In your
13 answer, you said 20,000 square foot taxpayer.
14 What does that mean in this context?

15 A. It's basically what Tom proposed to
16 be developed on the site, even though you
17 only have it for 20 years. A taxpayer is a
18 one-story retail building in New York City
19 parlance, it's a term of art.

20 Q. I have heard it before, but I want
21 to make sure that anyone reading this
22 transcript understands it. So that's
23 helpful. Thank you.

24 Again, you specifically identify
25 Rite-Aid and CVS in Exhibit 00. Why pick

1 S. Locatell

2 those?

3 A. They're typical retailers that have
4 footprints in that range and I said, i.e.,
5 like, for example, that type of thing, I'm
6 just pointing out size.

7 Q. Do you recall ever getting that
8 information after you sent this email to Ms.
9 DeMarco and Mr. Meyer?

10 A. We did not. Again, we looked, we
11 had been looking since the fall of 2018 for
12 these lease deals and we had not found them.

13 MR. KOH: Let's bring up what had
14 been previously marked as Exhibit AA.
15 It's No. 23 in my stack, Nat. It's a
16 September 16, 2019 letter from Mike
17 Meyer to Morris Missry and countersigned
18 by Tom Li, L-I.

19 Q. Do you recognize Exhibit AA, Ms.
20 Locatell?

21 A. Yes.

22 Q. Tell us what it is, please.

23 A. It looks like a letter that Mr.
24 Meyer from McDonald's sent to Mr. Missry as
25 landlord's attorney that sets forth some

1 S. Locatelli

2 agreement that they had continuing the
3 appraisal proceeding.

4 Q. In your earlier testimony a few
5 moments ago, you said you were told to stop
6 work on this assignment.

7 Does Exhibit AA help refresh your
8 recollection as to why you might have been
9 told to stop work on the assignment?

10 MR. WALSH: Objection to form.

11 Q. You can answer.

12 A. Well, what I was referring to in my
13 last answer was that we had selected the
14 neutral, we looked at each other's reports
15 and the clients were still disagreeing with
16 each other, so it was sort of a stop and go
17 procedure.

18 I believe that they were talking
19 about coming to an agreement as to how the
20 process would unfold with the neutral and
21 that's what this letter is detailing.

22 Remember, there was disagreement
23 between the way that Tom Tener and I read the
24 rent option addendum as to what Mr. Nakleh's
25 role would be and it appears to me that

1 S. Locatelli
2 during the summer of 2019, the attorneys were
3 attempting to come to some agreement as to
4 how the process would unfold with the
5 neutral.

6 Q. Paragraph numbered 1 of Exhibit AA
7 which we are looking at reads, Within three
8 weeks from the date of this letter, each
9 parties' appraiser will sent to the other
10 parties' appraiser his or her respective;
11 one, updated letter opinion of value
12 estimating each appraiser's fair market
13 rental value as defined in the option rent
14 addendum stating -- and stating the
15 methodology of valuation and conclusions and;
16 two, identifying the comparable transactions
17 on which the conclusions are based.

18 Did that ever happen?

19 MR. WALSH: Objection to form.

20 A. I believe I prepared a September --
21 I have a recollection there is a September
22 dated report. As to whether or not they were
23 exchanged, I don't recall.

24 And, again, it's not uncommon for
25 if a report is complete, it's sent to counsel

1 S. Locatell

2 and then the counsel would exchange the
3 reports as opposed to the appraiser
4 exchanging them each other directly, I don't
5 recall.

6 Q. Paragraph 3, the first sentence
7 reads, The parties have selected Marc Nakleh
8 as the third appraiser pursuant to the terms
9 of this lease and agree to engage Mr. Nakleh
10 within 21 days of this agreement.

11 To your knowledge, was Mr. Nakleh
12 ever engaged?

13 A. Again, I don't recall. I know Mr.
14 Nakleh was continuing to contact Tom and I
15 about whether or not this appraisal
16 proceeding was moving forward.

17 As to whether or not the parties
18 had signed a retention document with him, I
19 don't recall.

20 MR. KOH: Let's bring up what's
21 been marked as No. 24 in my stack and
22 mark it as the next exhibit, which would
23 be PP. It's a document bearing Bates
24 No. MCD 003520 to 21.

25 (Exhibit PP, documents bearing

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2 Bates stamp No. MCD 003520 and MCD
3 003521, marked for identification.)

4 Q. Do you recognize Exhibit PP?

5 A. Yes.

6 Q. What is it, please?

7 A. It is two emails, an email I sent
8 on Friday, September 20, 2019 to Tom saying
9 that I had heard that Carol and Sam, I'm
10 assuming that is Mr. Rottenberg, had spoke
11 about us all meeting, I believe that's Tom,
12 Marc and myself, and I was asking if --
13 actually, I should not say that. I don't
14 know if it was Carol, Sam, Tom and I or Tom,
15 Marc and I, but I had some understanding that
16 we were to meet and I was asking if he could
17 confirm if he was available, and then he
18 responded that we should speak on Tuesday and
19 his understanding was that Tom and I were
20 going to meet and share our values and comps
21 and he didn't think there was going to be a
22 meeting, I guess of ownership. That's my
23 understanding of the emails.

24 MR. KOH: Let's bring up what's
25 been in the stack as No. 25. It is a

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2 multipage document bearing Bates stamp
3 number MCD 000707 to 733.

4 Q. And if you want to get a hardcopy
5 of this document, it should be in the box we
6 sent over.

7 A. It's okay. It's not really any
8 better. It's a faint print.

9 Q. I have to work with what I have.
10 Maybe you can enlarge it.

11 (Exhibit QQ, documents bearing
12 Bates stamp No. MCD 000707 through MCD
13 000733, marked for identification.)

14 Q. Tell me what this document, which
15 is marked as QQ, is.

16 A. So this appears to be the document
17 that I gave to Tom Tener. It says -- I can
18 see on Ellen's handwriting, she wrote, Gave
19 to Tom Tener 9/27/19. This would have been
20 the -- this is our fair market rental value.
21 This was for the purposes, I believe, of Tom
22 and I discussing and still trying to
23 potentially come to some agreement and so
24 this is what that document is and this is --
25 yes, that's what this is.

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2 Q. That's Ellen's handwriting that
3 says, Gave copy to Tom Tener 9/27/19?

4 A. Yes, that is her handwriting.

5 Q. Did Mr. Tener come to your office
6 to pick up this document, do you know? Did
7 you speak to Mr. Tener on or about September
8 27, 2019?

9 A. I don't remember.

10 Q. Looking through this, I would like
11 to draw your attention to the addendum that
12 has the top pages in it.

13 A. Yes, I see that.

14 Q. These seem to have the zoning
15 listed there.

16 Do you have any idea why this one
17 has the zoning listed and the one we looked
18 at previous does not?

19 A. No. Again, these are Excels and
20 when these are copied into reports as
21 pictures and sometimes rows will be hidden or
22 unhidden.

23 Again, as I said, the referencing
24 the zoning for this report, whether I
25 referenced it or didn't reference it would

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2 not have changed the analysis at all and so
3 the initial time that they weren't included
4 was probably just because the columns were
5 hidden. It is in the individual pages and,
6 again, it has no effect on the rental value
7 determination.

8 Q. It has no effect on the rental
9 value determinations. Sometimes it appears
10 and sometimes it doesn't. Is that your
11 testimony?

12 A. Sometimes it's shown and when the
13 pictures are copied in from Excel, and
14 sometimes it does not.

15 We collect a lot of information.
16 When I'm collecting comp information, I
17 collect everything I possibly can. It
18 doesn't mean that every piece of data I
19 collect has an effect on value. We start
20 from scratch. We don't want to eliminate
21 anything and that's just smart appraisal
22 practice.

23 In terms of what we end up putting
24 in a report, it's looked at relative to
25 what's needed. The fact that zoning is shown

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2 here is nothing more than how the cells were
3 captured and put into a report. There is
4 nothing to be read in the fact that the
5 zoning was not in the initial report that I
6 sent to the clients.

7 The clients were aware of what our
8 value conclusions were, they had been reached
9 prior to issuance basically of the written
10 documents and, as I said before, given the
11 use of the property and the restriction as to
12 the time that the tenant has use of the
13 property, zoning was not relevant to making
14 large value adjustments for this property, so
15 showing it or not showing it, again, the
16 report I'm showing to Tom is more
17 comprehensive because it has the zoning in
18 it.

19 Q. So the subject property here was
20 split zone between M1-1 and RB-6, right?

21 A. That's correct.

22 Q. So were any of your comps also
23 zoned for M1-1?

24 A. Comparable No. 11 is zoned M1-2
25 manufacturing, there are no other M1-1s other

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2 than the subject. The subject has a
3 commercial manufacturing and residential
4 allowable uses, but the use that it can be
5 put to, it is subjected to the amount of time
6 that you can put that use to the property,
7 right, so you have a 20-year term.

8 I'm not sure if you are suggesting
9 because it's split zoned, you would develop
10 residential on the residential piece of it
11 when you only have control of it for 20 years
12 because that, in fact, is an incorrect
13 assumption. All of the comparables have a
14 residential with some sort of commercial
15 overlay.

16 Q. I understand that. I didn't mean
17 to suggest or assume anything.

18 My question was simply, were any of
19 the comparables that you included in your
20 September 20, 2019 report zoned in M1-1, and
21 I take it my answer is that none of them
22 were?

23 A. They all have different zonings,
24 every single one of them, which is not
25 unusual for this property type.

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2 Q. And it's also correct that none of
3 the comps you picked had any RB-6 zonings, is
4 that right?

5 A. With the exception of the M1-2, I
6 believe, they all have some sort of
7 residential zoning, they are all different.
8 I believe every comp has a specific
9 different -- we had an R6, so comparable No.
10 10 is R6 and R6 and R6B are not too
11 dissimilar, R6, R5 and R4 are not too
12 dissimilar, C1-2 and C1-3 are not that
13 dissimilar.

14 So, yes, all of the comparables
15 have slightly different zoning
16 classifications. All of the comparables,
17 however, allow for one-story retail uses and
18 that's what's important to note. The
19 important distinction is not what exactly is
20 the zoning classification. The distinction
21 is what is the use that is allowed based on
22 the zoning classification and all of these
23 comparables have zoning classifications that
24 allow the same use as the subject property.

25 I should say, as the subject

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2 property's highest and best use per this rent
3 option agreement, meaning, having controlled
4 the property for just 20 years.

5 Q. I would like to turn to page 2 of
6 the September 20, 2019 opinion of value, on
7 page bearing Bates stamp 708 and focus your
8 attention to the -- on the third paragraph of
9 that page after the A and B section.

10 You wrote, We are specifically
11 tasked with determining the FMV of the
12 subject land as unimproved based on highest
13 and best use and in consideration of a
14 five-year renewal term and other provisions
15 of the lease.

16 You wrote that, right?

17 You said five-year renewal term,
18 not 20-year renewal term. Why?

19 A. That's the other provisions of the
20 lease. I told you the analysis that we did
21 looked at the property assuming a 20-year
22 holding period.

23 Q. That's because the tenant had
24 control over the use of the property for 20
25 years pursuant to the lease, right?

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2 A. That's correct.

3 Q. The last sentence of this letter on
4 page 4 says or the second to last sentence
5 says, A complete appraisal will be supplied
6 at your request.

7 Has such complete appraisal been
8 prepared?

9 A. I believe this is the last report
10 that was prepared, that we prepared for this
11 assignment.

12 Q. Have you prepared any other written
13 reports concerning the property at 840
14 Atlantic Avenue since September 2019?

15 A. Not to my recollection, but -- not
16 to my recollection. Once the litigation
17 started, we did not prepare anything. What
18 I'm saying is, I don't recall when that
19 began.

20 Q. That's helpful. Thank you. I
21 would like to look at page 24, which is the
22 certification. I would like to focus on item
23 11, and it reads, Sharon Locatell has
24 performed no services as an appraiser or in
25 any other capacity regarding the subject

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2 property within the three-year period
3 immediately proceeding this assignment. Is
4 that a true statement?

5 A. Yes and no. Technically, I should
6 have listed the June and the -- I forget the
7 dates, the June and the 2018 report.

8 Q. The December 12, 2018 report?

9 A. Yes, this was all part of the same
10 assignment and same valuation, so, yes, this
11 is a typo. This is a form part of the
12 appraisal report that goes in there, so you
13 are correct, I should have said -- I should
14 have referenced the other work that was done
15 since December 2018, which the client knew
16 about, obviously.

17 Q. Let's take a look at your
18 underlying assumptions and contingent
19 conditions. I would like to focus on No. 3,
20 that there are no incumbrances or defects of
21 title.

22 Is that an accurate statement, to
23 your knowledge?

24 A. You can't just read that because
25 this is -- unless it's stated, otherwise, in

1 S. Locatell
2 the appraisal report, we are assuming no
3 encumbrances that we don't know about.
4 Again, this is a form portion of every
5 appraisal report that goes out, so there is
6 -- certainly could be a typo in here, but
7 that means something beyond the encumbrances
8 that have been discussed within the appraisal
9 report itself.

10 Q. Do you know how Vanderbilt Atlantic
11 Holdings LLC holds its interest in this are
12 property at 840 Atlantic Avenue?

13 A. Not specifically.

14 Q. Do you know if it is a fee simple
15 honor?

16 A. Not specifically. I'm assuming
17 there is a landlord, I think it was a Mr.
18 Musto, was the original landowner, and it's
19 unclear to me whether he is a joint venture
20 with Vanderbilt now and he's contributed the
21 property or, I don't know, I don't know the
22 structure. It's not relevant to the
23 assignment that I was given, which is to
24 determine fair market rental value, but
25 that's my -- that's the extent of my

1 S. Locatell

2 knowledge as to the landlord's position.

3 Q. Would it surprise you to learn that
4 Vanderbilt Atlantic Holdings was a ground
5 lessee of the subject property?

6 A. No, that wouldn't surprise me.

7 Q. And knowing that information, would
8 it effect your conclusions in your reports in
9 any way?

10 A. No, not at all.

11 Q. Did you ever look --

12 MR. WALSH: I just -- my microphone
13 was muted. I objected to attempted to
14 object to the form of the previous
15 question. I just want that on the
16 record.

17 Q. Did you ever make any attempt to
18 find out who owns the property at 840
19 Atlantic Avenue by say looking it upon ACRIS?

20 A. I personally did not. As a matter
21 of course, the appraiser working on this
22 would have done that. I know we were given a
23 copy of the lease and given that this
24 assignment was to determine value subject to
25 the lease, that would have been our primary

1 S. Locatell
2 understanding of who the landlord was and who
3 tenant was.

4 Ms. Benjamin, in her normal course
5 of appraisal work, will typically look up a
6 deed on ACRIS, but I can't tell you whether
7 she did or not.

8 MR. KOH: Let's bring up what is
9 No. 26 in the stack and mark it please
10 as RR, which is Mr. Tener's restricted
11 appraisal and it bears Bates stamp No.
12 1733 to 1749. These are produced by
13 McDonald's.

14 (Exhibit RR, documents bearing
15 Bates stamp No. 1733 to 1749, marked for
16 identification.)

17 Q. I believe these came from your file
18 Ms. Locatell, if you want to look at the
19 hardcopy.

20 Do you recognize what we designated
21 as Exhibit RR?

22 A. Yes, I do recognize it.

23 Q. What is this?

24 A. This is a report prepared by Tom
25 Tener and Sean Kest from KTR purporting to

1 S. Locatell

2 set forth the fair market rental value of the
3 demised premises for the renewal period,
4 assuming that the land will be held for a
5 20-year option term.

6 Q. There is handwriting on this
7 document.

8 Do you know whose handwriting it
9 is?

10 A. It looks like there is handwriting
11 from both myself and Ellen.

12 I recognize on page 4, Bates 583,
13 but sales, not retail, that's my handwriting
14 and then the handwriting on the following
15 page in blue, that is Ellen's handwriting.

16 Q. What was the meaning of your
17 writing, but sales, not retail?

18 A. Again, this goes back to the
19 gateway issue that he is using sales that
20 provide value for development sites that can
21 be controlled in perpetuity and that is not
22 what we are being tasked to do and it's also
23 not what he says he does in this report, so
24 he actually prepared two different analyses;
25 one where he assumes the value of the

1 S. Locatell
2 property can be -- one where he sets forth
3 the value of the property, assuming that the
4 owner will have control in perpetuity, and
5 that's based on looking at sales of
6 unencumbered land and then he does a land
7 residual analysis where he says he is
8 considering all uses to which the property
9 can be put within the 20-year option term.

10 So this was his report that after
11 landlord -- my recollection is that after
12 landlord and Mr. Tener agreed that, yes, in
13 fact, we had been correct in that the
14 encumbrance of the lease itself had to be
15 taken into account in determining this
16 renewal rent, Mr. Tener agreed to go back and
17 redo his analysis and this was his attempt at
18 doing that, but instead of actually redoing
19 the analysis utilizing what the lease
20 dictates for us, which is to look at
21 comparable transactions of which I had
22 provided to Mr. Tener and he was aware he,
23 instead, included his incorrect unencumbered
24 land sales and came to a value and then does
25 a one-paragraph land residual analysis, that

1 S. Locatell
2 shockingly comes to the same value assuming
3 you controlled the property for 20 years, so
4 this report is -- it's a little scattered
5 because it's setting forth two different
6 values, but it's concluding to one value, so
7 it's very confusing as to what this document
8 actually is and I think there are some real
9 issues with its credibility.

10 Q. Do you believe that Mr. Nakleh
11 would have been able to address the issues
12 concerning this report's credibility?

13 MR. WALSH: Objection to form.

14 A. I believe Mr. Nakleh would have
15 instructed Mr. Tener to complete the report
16 appropriately. The first half of his report
17 is setting forth a value conclusion that is
18 not called for in the lease and the second
19 half of his report is setting forth a value
20 conclusion that is called for in the lease,
21 but he is saying they're the same value
22 conclusion and I think Mr. Nakleh would have
23 said to Mr. Tener that your report doesn't
24 make sense because, No. 1, half of the report
25 which you are giving very strong reliance on

1 S. Locatell
2 in deriving your conclusion is a
3 misapplication of the valuation that you are
4 required to do under the terms of the lease,
5 so I don't believe that Mr. Nakleh would have
6 accepted this report as being responsive to
7 what landlord was supposed to produce in
8 determining the value for resale purposes of
9 the subject property.

10 Q. Am I correct that you've never, in
11 fact, discussed Mr. Tener's July 30, 2019
12 report with Mr. Nakleh?

13 A. Mr. Nakleh and Mr. Tener and myself
14 have never had a discussion about the
15 property, it never got to that point. The
16 litigation interceded before we went any
17 further in the appraisal proceeding.

18 Q. Isn't it true that where Mr.
19 Tener's report uses the land residual
20 technique, he concludes that the fair market
21 rental value would be bracketed between 1.3
22 million and \$1.478 million?

23 A. Yes, which is, he is -- take a look
24 at what that means. He has previously said,
25 based on his unencumbered fee simple

1 S. Locatelli

2 valuation of the subject property, that it is
3 worth 1.348 million and that assumes you have
4 control of the property in perpetuity with a
5 reversion value.

6 And then he goes on to do a land
7 residual analysis where he proposes that the
8 potential value of the site, when you control
9 it for only 20 years, could be as much as
10 1.478 million. There is a very big
11 disconnect there, so, yes, he does provide a
12 range, but he provides a very troubling
13 range.

14 Q. Is there any reason that you know
15 of that that couldn't have been addressed by
16 Mr. Nakleh in his role as the neutral
17 appraiser?

18 MR. WALSH: Objection to form.

19 A. Again, I think the entire KTR
20 report is not responsive to what was required
21 of the landlord and I believe that Mr. Nakleh
22 would have asked Mr. Tener to do a report
23 that was responsive to what the lease
24 required.

25 Remember, if the neutral appraiser,

1 S. Locatelli

2 the third appraiser and Mr. Tener and myself
3 can't agree, the value is averaged, and I
4 think that there is a very strong indication
5 here that Mr. Tener and landlord was sort of
6 trying to game the potential outcome by
7 putting in a document that is not responsive
8 to the value of the subject property, given
9 that there is only a 20-year term that's at
10 stake here.

11 So Mr. Tener has presented a report
12 that says, I'm valuing the property, assuming
13 that you have control of the property in
14 perpetuity, and that is just not the case, so
15 I don't think, given the direction in the
16 lease, which was a potential averaging of
17 values, I don't believe that Mr. Nakleh would
18 have accepted this report as being
19 appropriate.

20 Q. You wrote, you said, and perhaps
21 you misspoke, if the neutral appraiser, the
22 third appraiser and Mr. Tener and myself
23 can't agree, the value is averaged.

24 Is that what the option rent
25 addendum provides or does it provide for a

1 S. Locatell

2 majority of agreement?

3 MR. WALSH: Objection to form.

4 A. What document is the option
5 agreement, please?

6 Q. It's document No. 4.

7 A. What I said is correct. If the
8 appraisers or a majority of them cannot agree
9 on the FMV, it should be determined by adding
10 all three estimates and dividing the total of
11 all three estimates by the No. 3, that is
12 simple average.

13 Q. Let me ask a question. What would
14 happen, as you understand things, if you and
15 Mr. Nakleh -- if Mr. Nakleh agreed with your
16 value, the \$280,000 value, would that be the
17 fair market rent that was set or would it
18 still be averaged?

19 A. No, that be would the value, but I
20 didn't say that there wasn't a potential to
21 have a majority agreement. You are putting
22 words in my mouth.

23 What I said was that if they don't
24 agree, the three values get averaged. That
25 is, in fact, what the lease says.

1 S. Locatelli

2 Q. It wasn't my intention to put words
3 in your mouth. I was reading what admittedly
4 this realtime feed of the transcript said and
5 I wanted to be sure that we all had the same
6 understanding. So thank you for that
7 clarification.

8 MR. KOH: Let's bring up No. 27,
9 which is another version of Mr. Tener's
10 July 30, 2019 report and mark it SS, and
11 this bears Bates stamp Nos. MCD 00133 --
12 001733 through 49.

13 (Exhibit SS, documents bearing
14 Bates stamp No. MCD 001733 through MCD
15 001749, marked for identification.)

16 Q. My question is, do you recognize
17 this document?

18 A. I believe it's the same report,
19 just a different copy.

20 Q. It has different handwriting on it,
21 though, does it not?

22 A. It's the same KTR report, but the
23 handwriting notations are different, yes.

24 Q. Whose handwriting is this?

25 A. This, I believe, is my handwriting.

1 S. Locatelli

2 Q. I have some questions about the
3 specific handwriting that you have. On the
4 second page of the report, there is a
5 question mark and the words, have been
6 research and analyzed are underlined.

7 Do you remember why you made those
8 marks on this report?

9 A. I -- no, I don't. I believe that
10 before getting into the report, what were the
11 -- he is researching and analyzed land sales
12 and it's my first notation of, okay, he has
13 done this incorrectly, he is looking at sales
14 and property that can be owned for the full
15 bundle of rates in perpetuity.

16 Q. And on the next page, which is the
17 third page of the report, next to the land
18 valuation column, you wrote, not applicable?

19 A. Yes, for the same reason I just
20 mentioned.

21 Q. And you circled a couple of numbers
22 there. Can you tell me why?

23 A. Yes, I circled the numbers he
24 applied to the land value. He applied a \$575
25 per square foot to the ZFA zone M1-1 and he

1 S. Locatelli
2 applied a different value to the ZFA R6B, so
3 I was just circling the number.

4 Q. In the FMV determination section,
5 you circled and put a question mark at 10
6 percent or based a ratio of 10 percent.

7 Why did you do that?

8 A. For reasons we spoke about this
9 morning. Shockingly, where he got that
10 information. I was going to be curious to
11 see how he was supporting ratios of that
12 amount for land as of 2019.

13 What I circled on this page are the
14 metrics that he uses to come to his rental
15 value. It's the land price, plus the rent,
16 so I'm circling the information that's
17 relevant to -- that ties into the ultimate
18 conclusion that he has in this report.

19 Q. Is that also true of the markings
20 that you've made on the next page, which is
21 page 4, you are identifying metrics?

22 A. Exactly.

23 MR. KOH: I think now we would be a
24 good time to take a break. It's about
25 3:00. Why don't we come back at 10

1 S. Locatell

2 after 3:00 and see how much progress we
3 can make then.

4 (Recess.)

5 MR. KOH: Nat, can you bring up
6 what I marked in the stack as No. 28,
7 and that is an email from Mr. Meyer to
8 Ms. Locatell bearing Bates stamp No.
9 MCD 005310 to 11 and mark it as Exhibit
10 TT.

11 (Exhibit TT, documents bearing
12 Bates stamp No. MCD 005310 and MCD
13 005311, marked for identification.)

14 Q. Do you recognize Exhibit TT?

15 A. Yes, I do.

16 Q. Tell us what it is, please.

17 A. It's an email that I wrote. The
18 first part is an email that I wrote October
19 24, 2019 to Mr. Meyer and I cc'd Ms. DeMarco
20 and it is about, I had a call apparently with
21 Morris, Sam and Tom and I'm summarizing what
22 Tom's comments were regarding what he
23 undertook the land residual approach.

24 Q. Was anybody else on this call
25 between Morris, Sam and Tom, if you recall?

1 S. Locatelli

2 A. I don't recall.

3 Q. Your first comment, is that the
4 first bullet point, He found no comparable
5 ground leases for 20 years which considered
6 all the uses to which the subject property
7 could be put?

8 A. That's what he's stating, even
9 though I had shared with him at least 11
10 comparable leases.

11 Q. But was it -- did you understand
12 Mr. Tener's position to be that he didn't
13 believe those leases were comparable?

14 MR. WALSH: Objection to form.

15 A. No, I mean, no, I don't. He said
16 he considered -- he found no leases, this is
17 why I underlined it, which considered all the
18 uses to which the subject property could be
19 put.

20 Q. You write, My comments regarding
21 the statement are that this is a
22 representation of the fact that for a 20-year
23 term at this location, a drivethrough pad
24 site is the highest and best use?

25 MR. WALSH: Objection to form.

1 S. Locatell

2 Q. Let me read it properly. You
3 wrote, your comment to Tom's comment, is that
4 set forth in the paragraph underneath the
5 first bullet point?

6 A. Yes.

7 Q. So you wrote, My comments regarding
8 this statement are that this is
9 representative of the fact that for a 20-year
10 term at this location, a drivethrough pad
11 site is the highest and best use, right?

12 A. I wrote that.

13 Q. And you then wrote, It is not, and
14 you capitalize all the letters in not, for a
15 one-story block front retail building, nor is
16 it for an industrial building, both of which
17 are allowed under current zoning, right?

18 A. Correct.

19 Q. So the two of you disagreed on the
20 highest and best use. Would that be fair to
21 say?

22 MR. WALSH: Objection to form.

23 A. Tom -- that's not the only thing we
24 did not agree on.

25 Q. You at least disagreed on what the

1 S. Locatelli

2 highest and best use for the property was, as
3 encumbered by the 20-year lease term,
4 correct?

5 A. That is correct.

6 Q. Is that something that Mr. Nakleh
7 would be capable of determining, what the
8 highest and best use of the property was as
9 encumbered by a 20-year lease term?

10 MR. WALSH: Objection to form.

11 A. May I answer?

12 Q. Yes.

13 A. Yes. Mr. Nakleh would. That is
14 why I selected him, and felt comfortable with
15 him being a neutral here, because he does
16 have experience in reading these ground
17 leases and he would be capable of concluding
18 the highest and best use based upon
19 comparable lease transactions which were out
20 in the market.

21 Q. You had done your best to summarize
22 those comparable lease transactions, right?

23 A. Correct.

24 Q. And the last two sentences, you
25 write, If the HBU, I assume that means

1 S. Locatelli
2 highest and best use, was for construction of
3 a block front one-story retail building,
4 there would be comparable leases. There are
5 none.

6 So is it your contention that the
7 fact that Mr. Tener was unable to find
8 comparable leases, evidence of the fact that
9 Mr. Tener's proposed use of a one-story
10 retail block front building was not a
11 possible use?

12 MR. WALSH: Objection to form.

13 A. It's my opinion that that is one of
14 the pieces of evidence, it's not the sole
15 piece of evidence.

16 Mr. Tener neglected to look at
17 comparable leases, full stop. He then did a
18 residual analysis that, as I go on to say, is
19 riddled with inappropriate assumptions, so
20 the combination of a lack of leases for
21 similar property types, in addition to the
22 fact that there are many leases for 20-year
23 terms for comparable property types that are
24 not included in Mr. Tener's analysis, as well
25 as the inappropriate assumptions he made on

1 S. Locatell

2 the land residual analysis are indications
3 that he has the wrong highest and best use.

4 Q. Isn't it fairly common for
5 appraisers to have disagreements over whether
6 a comp is appropriate or not?

7 MR. WALSH: Objection to form.

8 Q. I think you can answer.

9 A. I would agree that appraisers have
10 different opinions of the comparability or
11 the degree of comparability of comps, but I
12 would point to you and say, Mr. Tener has no
13 comparables, not one, not a single comparable
14 lease for this assignment and that is, I
15 believe, evidence that he didn't research the
16 market adequately, he doesn't understand the
17 highest and best use of the property and he
18 doesn't understand the directions in the
19 lease.

20 So this is not an issue of Tom and
21 I disagreeing as to comparability. He has no
22 comparables. He is choosing not to undertake
23 the approach that is dictated in the rent
24 option addendum.

25 Q. But you've been involved in rent

1 S. Locatelli

2 reset appraisals where there is a dispute
3 over the applicability of each sides'
4 proposed comparables, haven't you been?

5 MR. WALSH: Objection to form.

6 A. In typical rent reset processes,
7 each side has comparables that they submit.
8 There is usually overlay of at least some
9 portion of those comparables and then there
10 are a portion of the comparables that one
11 side or another may think is comparable or
12 not, but it is highly unusual for one side to
13 submit when there is an active market for
14 comparable properties, for only one side to
15 submit comparable rentals, so this is not a
16 scenario where we are disagreeing over the
17 comps.

18 Tom has not done a comparable
19 search. He has not submitted any comps as it
20 relates to rental value.

21 Q. He did submit comps as it relates
22 to sale value, correct?

23 A. Yes, he submitted comparables as
24 relates to having control over the subject
25 property unencumbered.

1 S. Locatell

2 Q. You believe that those were
3 inappropriate comparables that Tom had
4 submitted?

5 A. They were inappropriate comparables
6 and Tom agreed they were inappropriate and so
7 did Mr. Missry. The landlord's position, my
8 understanding is they agreed to -- Tom redid
9 his report under the pretext that they were
10 agreeing that the lease was now subject to --
11 the rent redetermination was subject to the
12 term of the lease, it was encumbered, and
13 Tom's revised report was meant to reflect for
14 that, but instead of actually being a report
15 that sets forth the valuation under that
16 understanding, acknowledgment, he, instead,
17 did a mishmash of valuations where he took
18 his original valuation which looked at the
19 property as fully unencumbered, and then
20 added on a one-paragraph residual that comes
21 up with the same value or potentially even
22 higher for the property when it's encumbered
23 by a 20-year term.

24 Q. So bottom line, you and -- you
25 disagreed with Mr. Tener's report?

1 S. Locatelli

2 MR. WALSH: Objection to form.

3 A. Mr. Tener's report is incorrect and
4 does not set forth an analysis of the
5 property as encumbered.

6 Q. Is there any reason that Mr. Nakleh
7 could not have made that determination?

8 MR. WALSH: Objection to form.

9 A. I believe I told you multiple times
10 that I believe Mr. Nakleh would have made
11 that determination and I believe Mr. Nakleh
12 would have directed Tom to prepare an
13 appropriate report that dealt with the value
14 of the property per the terms of the rent
15 option addendum.

16 Q. Let's look at the second bullet
17 point. You say, the land -- excuse me, you
18 write that, Tom's comments why he utilized
19 the land residual approach were as follows,
20 and the second bullet point is, The land
21 residual technique that Tom does undertake is
22 riddled with inappropriate assumptions,
23 primarily regarding possible rental rates,
24 too high and the construction costs, too low,
25 right?

1 S. Locatelli

2 A. That's correct.

3 Q. So you, in addition to believing
4 that Mr. Tener didn't correctly identify the
5 highest and best use, is it fair to say that
6 you also believed that his land residual
7 model had inappropriate assumptions?

8 MR. WALSH: Objection to form.

9 Q. Did you believe that Mr. Tener's
10 land residual model had inappropriate
11 assumptions?

12 A. Yes, I did, I do.

13 Q. What assumptions did you consider
14 to be inappropriate?

15 A. Well, I list two of them here. The
16 rental rate that he concluded to for the
17 retail space that he proposes to build is
18 much too high relative to the amount of
19 vacancies that existed along Atlantic Avenue
20 as of the date of value and in conjunction
21 with the actual leases that he uses as
22 comparables which involve very small space
23 that are located in noncomparable locations,
24 they are located in pedestrian-driven retail
25 corridors where the rents are much higher per

1 S. Locatelli
2 square foot for very small spaces, so he uses
3 incorrect rents to apply to his proposed
4 21,000, thereabouts, square foot development.

5 In addition, the second point I
6 make in this email is that he uses
7 construction costs that are far too low for
8 how much it actually costs to build in New
9 York City. His construction costs, including
10 hard and soft costs, are just north of \$100 a
11 foot. That is ridiculously low by New York
12 City standards.

13 I know for certain that KTR has
14 access to numerous budgets, numerous reports
15 that are done by construction cost experts
16 and to put forth an estimate of \$100, plus or
17 minus a square foot to build a building in
18 anywhere in New York City, let alone this
19 area, is, I think, very not credible.

20 There are a couple of other points
21 as relates to his land residual analysis that
22 I didn't specifically lay out in this email,
23 but he also does not deduct the cost
24 necessary to procure these tenants, these
25 potential -- based on his rent comps, it

1 S. Locatell

2 would take a minimum of 10 tenants to fill
3 this space that he is going to be building.

4 He doesn't deal with the amount of
5 time it would take to find these tenants. He
6 doesn't deal with the leasing commission that
7 would be involved in executing these leases,
8 the legal fees, the downtime, the potential
9 TI, TI costs are now and as of our date of
10 value, very commonly paid to retail tenants.
11 None of those additional costs are reflected
12 in Mr. Tener's residual analysis and it has
13 the effect of inflating the value that he
14 comes up with.

15 Q. Do you believe that had Mr. Nakleh
16 been given the opportunity to review Mr.
17 Tener's report, he would have been able to
18 make the same determinations that you just
19 listed for me?

20 MR. WALSH: Objection to form.

21 A. Do I believe that Mr. Nakleh would
22 have noted the same errors in Tom's report,
23 yes.

24 Q. Yes. So do you believe that Mr.
25 Nakleh would have noted the same issues in

1 S. Locatelli

2 Mr. Tener's report?

3 MR. WALSH: Objection to form.

4 A. As it relates to the land residual
5 approach, yes, but, again, I go back to the
6 point that Tom Tener's report is not a report
7 that meets the standards of what's asked for
8 to determine the rental value of the subject
9 property for the purposes of the rent
10 renewal, so whether Mr. Nakleh -- I certainly
11 think Mr. Nakleh is smart enough,
12 knowledgeable enough and experienced enough
13 to recognize the errors in the specific data
14 as relates to Mr. Tener's residual analysis,
15 but the overriding issue would be that Mr.
16 Nakleh would have the opinion that Mr.
17 Tener's report is not an accurate estimate of
18 the rental value per the terms of the rent
19 option addendum.

20 MR. KOH: Let's bring up what is
21 marked as Exhibit U, please. I'm sorry,
22 it's No. 29. Let's mark it as Exhibit
23 UU. It's a two-page document bearing
24 Bates stamp No. MCD 005443.

25 (Exhibit UU, document bearing Bates

1 S. Locatell

2 stamp No. MCD 005443, marked for
3 identification.)

4 A. Yes.

5 Q. Do you recognize UU?

6 A. I do.

7 Q. Tell me what it is, please.

8 A. I believe this is just a
9 continuation of the email chain you just
10 asked me about previously.

11 Q. On October 25th, Mr. Meyer writes
12 to you, Hi, Sharon, I'm having trouble
13 articulating how Tom incorporated the lease
14 into his analysis. It seems that it played a
15 role in his land residual calculation. Can
16 you explain that?

17 And, in fact, you responded and
18 attempted to explain it, am I correct?

19 A. That is correct.

20 Q. You write, Tom's land residual
21 analysis technically does incorporate the
22 encumbrance issue because he projects only a
23 20-year holding period, right?

24 A. That is correct, that's what I
25 wrote.

1 S. Locatelli

2 Q. But then you go on to say that Mr.
3 Tener is assuming that a building is
4 constructed and leased out for a period of 20
5 years, he deducts the cost to construct, as
6 amortized over a 20-year period, and the
7 resulting value is the land value as
8 encumbered. Then you say, The problem is not
9 methodology, but his individual assumptions.
10 The rent is too high and the construction
11 costs are too low and he does not appear to
12 deduct any downtime for actually constructing
13 the building, right?

14 A. Yes, all of which I just explained
15 to you previously.

16 Q. The problem then is the assumptions
17 that Mr. Tener had made, right?

18 MR. WALSH: Objection to form.

19 Q. The problem with the land residual
20 analysis in Mr. Tener's report was the
21 assumption that he made?

22 MR. WALSH: Objection to form.

23 Q. Isn't that what you told Mr. Meyer?

24 A. Yes, and that's what I told you
25 numerous times in the last half hour. The

1 S. Locatell
2 problem with his residual analysis is that it
3 is riddled with incorrect assumptions and
4 analyses.

5 MR. KOH: Let's bring up -- let me
6 make sure I get this one correct, No.
7 31, please, in the stack, which is
8 another October 25, 2019 email from you
9 to Mr. Meyer.

10 Q. Do you recognize that one?

11 A. I do.

12 (Exhibit VV, October 25, 2019 email
13 from Ms. Locatell to Mr. Meyer, marked
14 for identification.)

15 Q. Can you tell us what Exhibit VV is?

16 A. Yes, this was, as I said a number
17 of times, Mr. Tener provided a very
18 abbreviated version of a residual analysis.
19 He has one paragraph of narrative and what I
20 was trying to do here was recreate his
21 conclusion, the range of his conclusion which
22 he reported to be, I believe, 1.31 million to
23 1.478 million, that's the net fallout value
24 to the land.

25 You remember he values the land,

1 S. Locatelli

2 assuming it's unencumbered and you have
3 control of it in perpetuity, I think 1.348
4 million and, here, he is showing you that if
5 you have it for 20 years, it could
6 potentially be worth more, 1.478 million, so
7 this is a snapshot. It's actually a picture
8 of an Excel that I put together to try to
9 recreate how he got to his numbers.

10 Q. I'm correct that you put this Excel
11 together?

12 A. Yes. If you will see at the
13 bottom, I list some of the costs that he
14 neglects to reflect for at all in his
15 analysis.

16 Q. So you understood what Mr. Tener
17 had done, but you didn't think he had done it
18 properly. Would that be fair to say?

19 MR. WALSH: Objection to form.

20 A. He did not do it properly, that's
21 fair to say, yes.

22 Q. You explained what Mr. Tener had
23 done and why it was improper in this series
24 of emails, right?

25 MR. WALSH: Objection to form.

1 S. Locatell

2 A. I'm sorry, I missed the question.

3 Q. The question is, isn't it true that
4 you explained what Mr. Tener had done and why
5 you believed it was improper in this series
6 of emails that we've looked at since our last
7 break?

8 MR. WALSH: Objection.

9 A. Yes, thus far, these emails are
10 indicating that the areas in which Mr.
11 Tener's analysis is wholly incorrect, yes.

12 Q. And if you could explain to Mr.
13 Meyer, I presume you could have also
14 explained it to Mr. Nakleh, right?

15 MR. WALSH: Objection to form.

16 A. I could explain -- I'm a very
17 experienced appraiser, I could explain how to
18 correctly do appraisals to anybody who needs
19 explanation, yes.

20 Q. As an experienced appraiser, do you
21 believe that Mr. Nakleh would have been able
22 to uncover the purported errors in Mr.
23 Tener's appraisal methodology?

24 MR. WALSH: Objection.

25 A. I believe that Marc would recognize

1 S. Locatelli
2 that this is an inaccurate and not credible
3 presentation of a land residual.

4 I also believe that the larger
5 issue is that he would have found Mr. Tener's
6 report incorrect from the get-go and he would
7 have required him to do a report that was
8 responsive to the lease which dictates you
9 look for lease comparables when available and
10 takes into account term. Mr. Tener's report
11 did not do that.

12 Q. Couldn't Mr. Nakleh have also
13 simply agreed with your reports?

14 MR. WALSH: Objection to form.

15 A. Yes, he could have, but if he did
16 not agree, as I said before, the final
17 determination is to average the three numbers
18 and it appears to me that Mr. Tener was
19 trying to submit a report that the proceeding
20 would be bound by that was higher than
21 substantiated by a correct and required
22 reading of the lease and the reason I say
23 that, I don't say that lightly, but the fact,
24 again, that Mr. Tener's conclusion of value
25 for the site when you are holding it for a

1 S. Locatell

2 20-year term, is equal to or potentially
3 greater than the conclusion of value for the
4 subject site when you hold it forever is
5 incredulous.

6 Q. Do you believe Mr. Tener was being
7 deliberately deceptive?

8 MR. WALSH: Objection to form.

9 A. I did not say that. I said that I
10 believe Mr. Tener submitted a report that is
11 not responsive to the lease document that we
12 are required to by accepting the assignment
13 produce and I believe that Mr. Nakleh, acting
14 as the third appraiser and recognizing the
15 fact there was a potential to average these
16 numbers, would have gone back to Tom and
17 directed him to do a report that was
18 responsive to what the lease was directing us
19 to do.

20 Q. Do you believe Mr. Tener was being
21 uncooperative?

22 MR. WALSH: Objection to form.

23 A. I didn't say that. We never got to
24 the point of actually interacting with Marc
25 or submitting our reports to him as far as I

1 S. Locatell

2 remember.

3 I believe that -- I think you asked
4 me previously if Marc had even been
5 officially retained, so I'm not saying that
6 Tom was being uncooperative. I'm saying that
7 his report was not prepared correctly and I
8 do believe that if we continued along the
9 process, that Mr. Nakleh would have had
10 issues with the report that KTR put forth as
11 being responsive to what we were directed to
12 do per the terms of the option agreement or
13 option addendum.

14 MR. KOH: Let's bring up the next
15 document, please, which is No. 33 on the
16 stack, Nat. It's described as Locatell
17 Notes 2, which may not be an accurate
18 description. Please mark it as WW.

19 (Exhibit WW, Locatell Notes 2,
20 marked for identification.)

21 Q. This document was produced from
22 your files, Ms. Locatell. I'm wondering if
23 you could tell us what it is.

24 A. It's notes that look like the top
25 half of the -- this is my writing the top

1 S. Locatelli

2 half of the notes relate to the subject
3 property, and then there is a sticky that
4 looks like it relates to another -- I don't
5 know what Elder Care has. I was doing a site
6 on Lexington Avenue around this time, so I
7 think this sticky is representative of a note
8 for a job on Lexington Avenue in Manhattan
9 and then also a job on Fulton Street that we
10 -- that Jeff Sutton --

11 Q. When I saw this, I assumed that the
12 sticky was not part of this assignment.

13 Do you share that assumption?

14 A. Yes.

15 Q. Let's talk about the rest of the
16 document then. It appears to be a sketch of
17 this site and you were sketching -- tell me
18 what you were sketching and why?

19 MR. WALSH: Objection to form.

20 A. I was -- the subject site has three
21 frontages and two zoning classifications, so
22 I was sketching here the layout and trying to
23 determine the square footage that lied within
24 the or lies within the M1-1 district versus
25 the R6B district, so that's what this is.

1 S. Locatelli

2 Q. Is that is what is reflected in the
3 column on the far right on the top part of
4 this beginning with 2,500 M1-1?

5 A. I believe so. I can't speak to
6 it's accuracy. These are working notes, so
7 the numbers may be different, but it was --
8 yes, it's looking at the site relative to its
9 zoning and relative to its layout, what the
10 frontages on Atlantic, Pacific and
11 Vanderbilt.

12 Q. Below that column, there is a
13 notation that says 2.4 FAR.

14 What does that mean?

15 A. FAR stands for floor area ratio and
16 that is the zoning metric that allows you to
17 determine what the gross building area that
18 can be constructed on a site is relative to
19 its site size.

20 Q. How did you determine that the FAR
21 for this property was 2.4?

22 MR. WALSH: Objection to form.

23 Q. Did you determine that the FAR for
24 this property was 2.4?

25 A. I don't believe I did. I believe

1 S. Locatell

2 M1-1 is a 1 FAR and R6B is a 2, but, again,
3 these are working notes, they may have been
4 doodles before we actually looked at what the
5 zoning is.

6 I, unfortunately, cannot remember
7 every FAR allocation to every zoning
8 classification I do. I have to look them up
9 on occasion.

10 Q. Then there seems to be a line that
11 says dollar sign, 8.5 million.

12 What does that refer to?

13 A. I don't know, but I believe -- one
14 second, please.

15 I believe these are notes that were
16 prepared in conjunction with us looking at
17 the value of the site unencumbered because if
18 you go back to document 6, which is exhibit
19 -- Exhibit H, this is the report we did
20 December 12, 2018, which looked at the
21 property as a vacant and unencumbered and you
22 will see that on page -- I think it's page 5,
23 you will see there is a little zoning chart
24 that ties to the notes on the exhibit you are
25 showing me, currently in terms of the site

1 S. Locatell

2 size that's located within each zoning
3 district and what the FAR is.

4 And then our final conclusion,
5 assuming this site was fully unencumbered,
6 not per the terms of the lease, mind you, was
7 roughly 9 million, 9.9 million, so I believe
8 this yellow pad were notes that were written
9 when this was being prepared.

10 Q. There is a notation that says M1-1
11 self storage, not IB maybe.

12 What does that mean?

13 A. M1-1 means that -- M1-1 self
14 storage means could you develop self storage
15 in that district.

16 I don't know what IB means or I
17 don't recall what I was referring to there.

18 Q. The line underneath that, is that
19 C8-2?

20 A. Yes.

21 Q. What does that mean?

22 A. That is another zoning district.

23 Q. Why is it on this page with the
24 information relevant to 840 Atlantic Avenue?

25 MR. WALSH: Objection to form.

1 S. Locatell

2 If you know.

3 A. I don't know. Again, these are
4 notes --

5 Q. I understand.

6 A. I don't know why it's there.

7 MR. KOH: Let's bring up the next
8 document, which is No. 32 in my stack,
9 Nat, marked Locatell Notes 1 and, this,
10 you may need to rotate, there is a drop
11 down that says, rotate pages. Keep
12 doing that until you get it so you could
13 see it. These documents were also
14 produced to your files.

15 Q. Do you recognize what this is?

16 A. This looks like, this is -- I
17 should say where it says 840 Atlantic Avenue,
18 that's Ellen Benjamin's writing. The rest of
19 it looks like my writing. So they're my
20 notes from a call with McDonald's that
21 occurred on October 24, 2019 and there are
22 some phone numbers there. It just turned on
23 its own.

24 Q. That's not supposed to happen. I
25 don't know why that did.

1 S. Locatell

2 A. So the remainder of the notes look
3 like that is my handwriting.

4 Q. So this is notes that you were
5 taking during this call?

6 A. Yes, they're notes. I take notes
7 typically during phone calls and -- not
8 always, but, you know, I do if there is --
9 usually, if I had a pad in front of me, I'm a
10 doodler, but, in any case, I take notes as to
11 what I tell the client and I take notes as to
12 what the client tells me, so it's difficult
13 to -- I would assume that the first three are
14 notes that I told them because these were my
15 concerns about Tom's report.

16 (Exhibit XX, Locatell Notes 1,
17 marked for identification.)

18 A. I believe what these are, it says
19 below, this was a call between Sam, Tom
20 Morris, Carol Mike and myself.

21 Q. That call, did that happen on or
22 about October 24th, is that the call that we
23 are talking about here?

24 A. I'm assuming it was around then.
25 There is a line that underlines. I know when

1 S. Locatelli

2 I take notes, many times I will have notes
3 for different jobs on the same page and
4 sometimes I put a line underneath to separate
5 them, so I'm sure the call, if it wasn't at
6 1:30 at 10/24, it was around that date, I
7 don't recall specifically.

8 Q. Let's take a look at the second
9 page.

10 A. Yes.

11 Q. At the top, there is a notation
12 that said, Conclusion supported 1.348 M.

13 What does that refer to?

14 A. You have to start at the previous
15 page because I believe the last three lines,
16 I had asked Tom why he left in his land value
17 as unencumbered and he left it in because
18 appraiser compared the 1.31 million to 1.478
19 million per year [original GL conclusion] and
20 conclusion supported his 1.348 million, so
21 I'm quoting here or paraphrasing why Tom --
22 what Tom's explanation was for the reason
23 that he included an inappropriate valuation
24 in this revised appraisal that is supposed to
25 correct for the fact that he did not take

1 S. Locatelli

2 into account the encumbrance of the lease.

3 Q. In the -- looking at that page 2
4 that I drew your attention to right below
5 where it says, Conclusions supported 1.348 M,
6 there is an arrow and then it's underlined.
7 It says, Mike.

8 Can you tell me what it says after
9 that? I'm having a little trouble reading
10 some of that.

11 A. My shorthand, I can suss out, I
12 think, generally what I was referring to
13 here. I think Mike had asked -- we had a
14 discussion, likely prompted by Mike Meyer
15 about why the appraisal compared -- the
16 appraisal comps were compared. There were no
17 ground leases that were only 20 years.

18 Remember, Tom, in coming up with
19 his rental value, his original rental value
20 for the property assumed -- reported that he
21 had looked at a number of leases in the range
22 of 35 or so and he had looked at the ratios
23 those leases had provided to set the ground
24 rent amount and Tom had said he had looked at
25 all -- all of the leases he had looked at

1 S. Locatelli

2 were 49-year leases and I think Mike had
3 said -- was asking why he hadn't looked at
4 any 20-year leases, given that was the term
5 that we were constrained by in evaluating the
6 subject property.

7 Q. And how did Mr. Tener respond?

8 A. I don't recall. He was very, you
9 know -- he never really addressed the fact
10 that he was using market data that was, you
11 know, 50 years or greater old in coming up
12 with a current market value, so I don't know
13 that he had any real answer other than, well,
14 that's what I had available and that sort of
15 thing.

16 Q. And below that line, there is -- I
17 see the words 20 YR, which I assume to be
18 year.

19 What is before that?

20 A. LR, I'm assuming that stands for
21 land residual, land residual-20 year,
22 one-story retail onsite fully amortized over
23 lease term as any one. This was what Tom
24 responded to as to how he did the land
25 residual analysis.

1 S. Locatell

2 Q. Then below that, a couple of lines
3 down, there is a line that begins with the
4 word, Morris.

5 Can you read that to me?

6 A. It says, Morris interject. Why did
7 analysis not same comps as Sharon. Why not
8 helpful.

9 Q. Were you trying to paraphrase or
10 quote Mr. Missry there?

11 A. I guess, I would not want to
12 paraphrase Mr. Missry, I actually don't know
13 what that refers to.

14 Q. In the column, there is a notation
15 that says, HBU, and then there is a word
16 underneath that. Is that disingenuous?

17 A. Yes, that was my comment.

18 Q. That was your comment. It's next
19 to the word Mike understand how appraisal
20 compliant with lease.

21 So what exactly were you saying was
22 disingenuous there?

23 A. I was saying his highest and best
24 use was disingenuous. I wasn't saying Mike
25 was disingenuous, I was saying Tom's highest

1 S. Locatell

2 and best use conclusion was disingenuous. He
3 neglected to consider the actual leases that
4 were in place for comparable corridors.
5 That's what I was saying was disingenuous.
6 Mike was trying to understand how Tom's
7 appraisal was compliant with the lease,
8 that's what that comment meant.

9 Q. At the bottom of the page, there is
10 a darker rendition of the word, Morris, and
11 can you read to me what it says underneath
12 that?

13 A. Yes. That is an example of my
14 doodling. Morris, this report complies, are
15 you --

16 Q. Would that word be, drawing a line
17 in the sand? That's what it looks like to
18 me?

19 A. That seems like it. Are you
20 drawing a line in the sand?

21 Q. So what did you understand Mr.
22 Missry to mean by that?

23 A. I guess he was arguing, my
24 recollection is that he was arguing that
25 Tom's report was compliant, even though it

1 S. Locatell

2 had a valuation based on an unencumbered
3 methodology and then he was asking, Are you
4 drawing a line in the sand? I don't recall
5 what that was in reference to.

6 Q. Then there is some words after that
7 and I can't make out the next word. Can you
8 tell me what that is?

9 A. It says, I have not done HBU or
10 used ground leases.

11 Q. Right. Who was saying that?

12 A. I don't know.

13 Q. Then there is a word before those
14 parenthesis. Do you know what that word is?

15 A. Nuff fu [sic]. I have no idea what
16 that means, sorry.

17 Q. You don't have to apologize. If
18 anybody read my notes, they would probably be
19 horrified, too. Sometimes it just happens
20 that way.

21 Let's turn to the next page,
22 please.

23 A. I'm trying to turn it, it's not --
24 okay. Now, it's going. Got it. I'm there.

25 Q. At the top of the page, it says,

1 S. Locatell

2 Mike, third appraiser.

3 Do you know what that refers to?

4 A. No. Maybe we were discussing the
5 third appraiser or Mike brought up the third
6 appraiser.

7 Q. And then there is a line that
8 begins, Morris. Can you explain -- can you
9 tell me what that says?

10 A. It looks like there was a
11 discussion being had about what the procedure
12 would be with the third appraiser.

13 Morris, last paragraph of first
14 page. If two can't agree, appoint third.
15 Third does his job and issues letter opinion,
16 then you take the average.

17 Again, that's where I go back to
18 the average I was discussing earlier, so
19 that's what Morris was stating.

20 Q. Then you write, You disagree. What
21 does that mean? Who was disagreeing with
22 what?

23 A. Well, I disagreed. I told you, I
24 disagree on the reading of that.

25 Q. Okay. Was --

1 S. Locatell

2 A. It might have been Morris was
3 saying I disagree because he wrote, you
4 disagree. I was writing what he said most
5 likely.

6 Q. It then says, If continues to
7 maintain position, then we will go to court.

8 Who brought up the idea of going to
9 court?

10 A. It seems like it was Morris. He
11 said the notes here are that he is explaining
12 what he thinks happens and then he is saying,
13 we disagree, meaning, myself and the landlord
14 and then he is saying, if continued to
15 maintain this position, and you can see I
16 tried to write like a little quote by the
17 then, I recognize my little quotation marks,
18 then we will go to court.

19 Q. Aren't you quoting Mr. Meyer here?

20 A. No, this is Morris, this is all
21 Morris notes. Morris -- Mike doesn't start
22 speaking until after. Morris tells us we are
23 going to be backing them into a corner and
24 they will go to court and then Mike responds
25 below, so everything above was Morris.

1 S. Locatell

2 Q. At the bottom of the page, there is
3 some small print. It says in the column --
4 Can you tell me what that says?

5 A. After Morris says, We are going to
6 court?

7 Q. Yes. The only writing in the left
8 column on this page begins with DIFF.

9 A. Difference, I'm assuming,
10 difference in methodologies, differ in
11 results.

12 Q. Was that a note to yourself?

13 A. No, this is all Morris talking now.
14 Above, I do the dash, Morris, and Morris is
15 arguing, they don't want to argue that we are
16 going to court and they came up with their
17 own interpretation of the lease, so this is
18 me, I believe this is me paraphrasing what
19 Morris was saying at that point.

20 Q. And you say -- can you read to me
21 the sentence that is next to the arrow at the
22 bottom of the page?

23 A. Come up with own interpretation of
24 lease and I can't make out --

25 Q. Does it say, do his own thing?

1 S. Locatell

2 A. And do his own thing. Happy to
3 take your view on that. Again, this is
4 Morris speaking.

5 Q. Let's take a look at the last page,
6 please.

7 A. Okay. There we go.

8 Q. At the top, you wrote, For benefit
9 of everyone on call. Give us thoughts how
10 process will continue.

11 Who was saying that, if you
12 remember?

13 A. I believe Mike, because I have
14 noted over to the side what Morris said and
15 this sounds more like Mike than Morris. He
16 says, For the benefit of everyone on the
17 call, give us thoughts on how the process
18 will continue. The appraisal piece. We need
19 to determine if Tom's analysis is compliant
20 with the lease. Morris is obviously arguing
21 there is nothing to be determined, he
22 believes that Tom's analysis is compliant and
23 so I wrote over on the side, Morris, you
24 don't like it?

25 Q. Then under that, you say, intent --

1 S. Locatell

2 A. I was pointing out that Morris was
3 saying you don't like it and then Mike said,
4 Instruct the third appraiser to do an
5 estimate without the analysis if no comp
6 leases. Morris recommended he'll --

7 Q. What does it say under that?

8 A. He'll and Fed. He'll will take out
9 sales approach because land residual is only
10 appropriate approach because no 20 year,
11 meaning, no control after 20 year. Send
12 email on how they got to land residual. Mike
13 sit tight until Tuesday.

14 Q. Was send email and how they got to
15 land residual, was that a request that Mike
16 was making of you?

17 A. I believe so, it was likely. You
18 showed me an exhibit earlier that had my
19 Excel, a picture of my Excel where I
20 attempted to recreate Tom's residual based on
21 the data he had provided in his report. I
22 believe that email was probably in response
23 to this.

24 It sounds like he was asking me how
25 to do that because if you will see, I have

1 S. Locatell

2 two hard lines after Morris speaks and,
3 usually, I would put something like that if
4 it was closed, what I was -- the conversation
5 was closed and then I said, send email to
6 Mike and wait, so I'm sure that sit tight was
7 a direction from my client.

8 Q. Just so I'm clear, in the portion
9 above, did, in fact, Morris say that or offer
10 to take out the sales approach and only do a
11 land residual analysis?

12 A. Morris recommended he will take out
13 sales approach because the land residual is
14 the only applicable approach.

15 Q. And I take it McDonald's never
16 agreed to that, as far as you know?

17 MR. WALSH: Objection to form.

18 A. I don't know, I have no knowledge
19 of that.

20 MR. KOH: Let's bring up what is

21 No. 34 in this stack, please.

22 Q. And these are more notes. They may
23 not be yours. I'm still trying to figure
24 this out, but it's lengthy and they seem
25 disjointed and I'm trying to figure out if

1 S. Locatelli

2 any of these are your notes, so if you could
3 page through the document and let me know
4 which of these pages are your notes, I think
5 we should start there. This has been
6 previously marked as Exhibit DD.

7 A. Most all of these notes are Ellen
8 Benjamin's.

9 Q. Some are yours, I think, right?

10 A. That's correct. Would you like me
11 to tell you which pages are mine?

12 Q. That would probably be helpful, but
13 I think I can probably guess. Let's get you
14 to confirm that.

15 A. Page 2, the white paper.

16 Q. Okay.

17 A. No. 6, the one that's on its side.

18 Q. That has your telltale doodles?

19 A. That's right.

20 Q. They say, I can't learn anything.

21 What else is yours?

22 A. I'm not sure if there is anything
23 else. There may be one more I saw.

24 Q. I think there is. Take your time.

25 A. Yes, page 19 is mine and page 20.

1 S. Locatell

2 Actually, page 20 has some of Ellen's writing
3 on there, too, but it's mostly mine. I
4 believe the rest is all Ellen's.

5 Q. Let's focus on just yours. Let's
6 skip page 2 because I think I understand what
7 that's about. Let's go to the one I think
8 you said was page 9, which is the one on its
9 side, which I'm happy to have you rotate.

10 A. The rotation for me is -- I don't
11 know how I'm rotating, it rotates when I
12 hover.

13 Q. You have to click and it appears to
14 me to only rotate in one direction, but there
15 it is.

16 Just bear with me while I review
17 this. This seems to be -- it contains a
18 couple of dates. 9/9/19 and July 10th.

19 Can you explain what the two dates
20 are?

21 A. No. If you see below on the
22 right-hand side, I say, One week in August
23 for daughter's B day. Three-year sabbatical.
24 Carol may have been telling me when she was
25 going to be away in on vacation in August.

1 S. Locatell

2 Q. These notes were probably written
3 in July, not in September, you can't say for
4 certain?

5 A. I can't say for certain.

6 Q. Let's go to the other pages, which
7 I believe you identified as 19 and 20 --

8 A. You are right, 19 and 20, I'm
9 there.

10 Q. On page 19, it says, 80 Atlantic
11 Avenue on the top and above that, there is a
12 word that says, Liz, and then I can't read
13 what it says.

14 Does that have anything to do with
15 840 Atlantic Avenue?

16 A. Liz Genovese was another MAI
17 appraiser, so she may have been someone we
18 were thinking about as a potential neutral.

19 Q. Do these notes reflect, at least at
20 the top, an attempt to select a third neutral
21 appraiser?

22 A. Yes. I can't tell you whether
23 these notes are notes that I had in a
24 conversation with Tom or notes that I had a
25 conversation with client, but these were

1 S. Locatelli

2 people who I would typically put on my list
3 as qualified appraisers to act as a neutral.

4 Q. Then below that, there is a section
5 that says, Comps, and next to that, does that
6 say Bensonhurst?

7 A. Yes.

8 Q. And then there are two numbers, 250
9 K and 300 K.

10 What does this refer to?

11 A. I don't know. A comp in
12 Bensonhurst maybe somebody told me about.

13 Q. Below that, there is a line that
14 says, 4.5 mill Ozone Park, and then I think
15 it says stone.

16 A. Store.

17 Q. Do you know what that refers to?

18 A. I have no idea.

19 Q. Is that another potential comp that
20 you were discussing with someone?

21 A. I don't know. I mean, it could be
22 the amount some store grosses because it says
23 it's a mall deal and it's 10 percent to
24 sales, so I don't know what this is.

25 Again, remember, around this time,

1 S. Locatell

2 I was also working on something in Whitestone
3 which was located in more of like a strip
4 mall, so this might be something having to do
5 with that job and not the subject property.

6 Q. Then you say, ground lease, with an
7 arrow, don't pay based on sales.

8 Do you know what that means?

9 A. Yes, they don't pay rent, based on
10 the sales they do, at whatever site this is.

11 Q. That's a discussion of what is
12 going on at that particular site?

13 A. Yes.

14 Q. I see. And the 4.3 million. Does
15 that reference that particular site, as well?

16 A. Yes, it appears to, yes.

17 Q. The next page, it says, BKLYN at
18 the top left corner, and then it says 840,
19 Madison is crossed out and it says Atlantic
20 Avenue, so that refers to this property,
21 right?

22 A. It does. That's Ellen's writing,
23 the shorthand for Brooklyn and Atlantic
24 Avenue. The rest is my writing and I think I
25 was working on a mediation involving an 800

1 S. Locatell

2 block located Madison Avenue property during
3 this timeframe, so she was correcting the
4 note.

5 Q. It says, Hanging hat on language.
6 Pure appraisal proceeding.

7 Do you know what that refers to?

8 A. It means it's -- the lease calls
9 for an appraisal proceeding and I think it's
10 referencing the language in the rent option
11 addendum, I'm assuming.

12 Q. Do you remember who was hanging
13 their hat on language?

14 A. No, both parties were, both parties
15 were reading the language as to how you
16 proceed in the appraisal proceeding
17 differently.

18 Q. Below that, there is a line that
19 says -- a solid line and it says, Land use,
20 ask Jennifer.

21 Do you know what that refers to?

22 A. That would be land use attorney,
23 Jennifer.

24 Q. Do you know why that is written
25 here?

1 S. Locatell

2 A. I don't remember her last name, but
3 it may have been a land use attorney that I
4 was going to recommend to the client to reach
5 out to, which, again, I believe they didn't
6 ever do.

7 Again, just so you are aware, Mr.
8 Koh, that line across, when I take notes,
9 again, I put a line across, so that notation
10 doesn't relate to -- likely, to the notes
11 that I was making above, just so you are
12 aware. It could be a separate assignment, a
13 different job, a different day definitely,
14 but...

15 Q. Thank you for that clarification.

16 MR. KOH: It's about 4:25. I would
17 like to take a break now and we will see
18 how much more, if any, I want to do at
19 this point.

20 (Recess.)

21 MR. KOH: Thank you for coming in
22 today remotely, Ms. Locatell. Unless
23 Mr. Walsh has questions, I think we are
24 done.

25 MR. WALSH: I just have one place I

1 S. Locatell

2 want to follow-up on.

3 EXAMINATION BY

4 MR. WALSH:

5 Q. Ms. Locatell, if you could pull up
6 Exhibit LL, it's document 16.

7 A. Yes.

8 Q. So on the bottom of the first page,
9 there is an email from Tom to Marc and he
10 talks about forwarding conflicts disclosures.
11 On the next page, top of the next page, he
12 says, Thanks and have a great weekend.

13 Do you see that?

14 A. Yes, I do.

15 Q. Then Marc responds to that on May
16 31, 2019, 11:02 and writes, Thanks for the
17 update. I will sit tight. Have a good
18 weekend to all and then you respond, Thanks.
19 Looks like it will be another beauty.

20 You testified before about what
21 that may mean. Do you think that could have
22 been referring to the weather that weekend?

23 A. I think it was. That's the problem
24 when you get asked questions referring to
25 information, things you might have said in an

1 S. Locatell

2 email two years ago, but, yes, I think I was
3 referring to the weekend.

4 Q. So you were saying, essentially, it
5 looks like it will be another beautiful
6 weekend. Is that what you think you were
7 trying to say?

8 A. Yes.

9 MR. WALSH: I have no further
10 questions.

11 MR. KOH: I don't have any
12 follow-up.

13 (Time noted: 4:34 p.m.)

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1 CERTIFICATE

2
3
4 I HEREBY CERTIFY that the foregoing proceedings
5 were duly sworn by me and that the proceedings are a
6 true record.

7 
8
9 Leslie Fagin,
10 Registered Professional Reporter
11 Dated:
12

13 (The foregoing certification of this transcript
14 does not apply to any reproduction of the same by any
15 means, unless under the direct control and/or
16 supervision of the certifying reporter.)
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ACKNOWLEDGMENT OF DEPONENT

I, , do hereby
certify that I have read the foregoing pages,
and that the same is a correct transcription
of the answers given by me to the questions
therein propounded, except for the
corrections or changes in form or substance,
if any, noted in the attached Errata Sheet.

SHARON LOCATELL DATE

Subscribed and sworn
to before me this
day of , 2021.

My commission expires:

Notary Public

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E R R A T A

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